LITTLETONS

Tenures

IN

ENGLISH,

Lately peruſed and amended.

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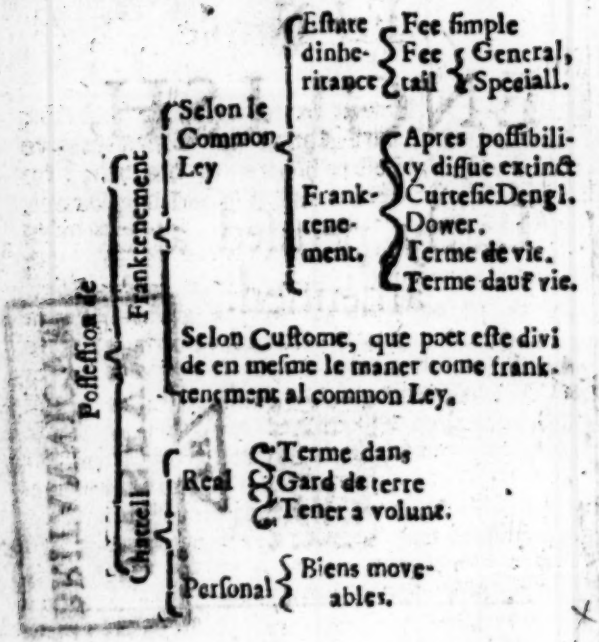
A Figure of the diuiſion of Poſſeſſions.



Fee ſimple.

A Tenant in fee ſimple is he which hath Lands or Tenements to hold to him and to his heires for ever: and it is called in Latine, Feodum ſimplex: for Feodum is called inheritance, and Simplex is as much to ſay as lawfull or pure, and ſo Feodum ſimplex, is as much to ſay, as lawfull or pure inheritance: For if a man will purchaſe Lands or Tenements in fee ſimple, it behoveth him to have theſe words in his purchaſe, To have and to hold unto him and to his heires: for theſe words (his heires) make the eſtate of inheritance, Anno 10. Henricis. fol 38 for if any man purchaſe Land in theſe words: To have and to hold to him for ever: or by ſuch words, To have and to hold to him and to his aſſignes for ever, in theſe two caſes he hath none eſtate but for terme of life, for that that he lacketh theſe words (his heires) which words only make the eſtate of inheritance in all feoffements and grants.

And if a man purchaſe Lands in fee ſimple & die without iſſue, every one that is his next co-

an collaterall, of the whole bloud, how far ſoever that he be from him of degree; may inherite and have the ſame land as heire unto him. But if there be father and ſon, and the father hath a bro-ther which is uncle unto the ſon, & the ſon pur-chaſed land in fee ſimple, and dieth without iſſue living the father, the uncle ſhall have the land as heire unto the ſon, and not to the father (yet the father is more nigh of bloud unto the ſon) for that that there is a ground in the law, that in-heritance may lineally deſcend, but not lineally aſcend: yet if the ſon in ſuch caſe die without iſſue, and his uncle entreth into the land as heir unto the ſon, (ſo as he ought by the law) and after if the uncle deceaſe without iſſue living the father, then ſhall the father have the land as heire unto the uncle, and not as heire unto the ſon, for that that he commeth unto the land by collaterall deſcent and not by lineall aſcention.

And in ſuch caſe where the ſon purchaſeth land in fee ſimple, and dieth without iſſue, they of his bloud on the fathers ſide ſhall inherite as heire unto him, before any of the bloud of the mothers ſide. But if he have no heire on the fa-thers ſide, then ſhall the land deſcend unto his heire on the mothers ſide. And this is the opini-on of the Juſtices Mich. 12. E. 4. fol. 35. But there it was holden, if any land deſcend unto a man by the fathers ſide which dieth without iſſue, that his next heire on the fathers ſide ſhall inhe-rite unto him, that is to ſay, the next of bloud of the father of the grandfathers ſide. And for de-fault of ſuch an heire, they that be of the fathers bloud of the part of the mother of the father,

(that

(that is to ſay) the grandmother ought to inherite. And if there be no ſuch heire on the fathers ſide, then the Lord ſhall have the land by Eſcheate. And ſo it is if a man take a wife inheritor in fee ſimple, which hath iſſue a ſon and dieth, and the ſon entreth into the tenements as ſon and heire unto his mother, and after dieth without iſſue, the heires on the mothers ſide ought to inherite the tenements, and not the heires on the fathers ſide.

And if there be no heires on the mothers ſide, then the Lord of whom the ſame Land is holden ſhall have the ſame land by Eſcheat. In the ſame manner it is if Lands deſcend unto the ſon on the fathers ſide, which entreth, and after dyeth without iſſue, the land ſhall deſcend unto the heires on the fathers ſide, and not unto the heires on the mothers ſide. And if there be none heires on the fathers ſide, then the Lord of whom the land is holden ſhall have the ſame land by Eſcheat. And ſo ye may ſee the diverſity, where the ſon purchaſeth Lands in fee ſimple, and where he commeth unto thoſe lands or tenements by deſcent on the fathers ſide, or on the mothers ſide.

Alſo, if there be three brethren, and the middle brother purchaſeth land in fee ſimple and dyeth without iſſue, the elder brother ſhall have the land by deſcent and not the yonger. Alſo if there be three brethren, and the youngeſt brother purchaſeth land in fee ſimple and dyeth without iſſue, the elder brother ſhall have the land by deſcent, and not the middle brother, for that that the elder brother is more worthy of blood.

And it is to be underſtood, that no man ſhall have land in fee ſimple by deſcent as heire unto any man, unleſſe he be his heire of the whole bloud. For if a man have iſſue two ſons by two venters, and the elder purchaſeth land in fee ſimple and dyeth without iſſue, the younger brother ſhall not have the land, but the uncle of the elder brother, or ſome other his nigh coſin ſhall have it, for that that the younger is but of the halfe bloud to the elder brother. And if a man have a ſon and a daughter by one venter, and a ſon by another venter, and the ſon by the firſt venter purchaſeth Land in fee ſimple and dyeth without iſſue, the ſiſter ſhall have the Land by diſcent as heire unto her brother, and not the younger brother, for that that the ſiſter is of the whole bloud to her elder brother.

And alſo where a man is ſeiſed of land in fee ſimple, and he hath iſſue a ſon and a daughter by one venter and a ſon by another venter and dyeth, and the elder ſon entreth and dyeth without iſſue, the daughter ſhall have the land, and not the younger ſon, and yet is the younger ſon heire unto his father, but not unto his brother. But if the elder ſon enter not into the land after the death of his father, but dyeth before entry be made by him, then the younger brother may enter and have the land as heire unto his father. But where the elder ſon in the caſe aforeſaid, entreth after the death of his father, and thereof have poſſeſſion, then the ſiſter ſhall have the land: Quia poſſeſſio fratris de feodo ſimplici, facit ſoro-rem eſſe hæred'. For the poſſeſſion of the brother in fee ſimple maketh the ſiſter to be heire.

But

But if there be two brethren by diuers bren-ters, and the elder is ſeiſed in fee ſimple and dy-eth without iſſue, and his uncle entreth as heire unto him, which alſo dyeth without iſſue, then the younger brother may have the land as heire unto his uncle, becauſe he is of the whole blood to him, though he be but of halfe blood unto his elder brother.

And it is to be underſtood, that this word (Inheritance) is not only underſtood where a man hath lands or tenements by deſcent of he-ritage: But alſo every fee ſimple or fee taile that a man hath by his purchaſe, may be ſaid inherit-tance, for that that his heires may inherite them. For, in a Writ of Right that a man bringeth of land, that was of his own purchaſe, the Writ ſhall ſay, Quam clamat eſſe jus & hæreditatem ſuam, that is to ſay, which he claimeth to be his right and his inheritance. And ſo it ſhall be ſaid in diuers other Writs which a man or a woman bringeth of their own purchaſe, as it appeareth by the Regiſter.

And of ſuch things as a man may have a manuall occupation, poſſeſſion, or receit, as of Lands, Tenements, Rents, and ſuch other, a man ſhall ſay in his pleading, and way of bar, that one ſuch was ſeiſed in his demeſne as of fee. But of ſuch things as lie not in manuall occupation, &c. as of Aduowſon of a Church, and ſuch manner things: there he ſhall ſay, that he was ſeiſed as of fee, and not in his demeſne as of fee. And in Latine it is in the ſame caſe ſaid, Quod talis fuit ſeiſitus in dominico ſuo ut de feodo, that is to ſay, that ſuch a one was ſeiſed

in fee simple as of fee, and in the latter, Quod tale statum habeat de cetero, that is to say, that such shall have such like estate.

Also note well, that a man may not have a more large, or greater estate of inheritance, than fee simple.

Also, fee taile is called the possession of lands or tenements that a man hath by his deed or by his agreement, unto which possession he commeth not by descent of any of his ancestors, or of his tenants, but by his own deed.

Fee taile.

Fee taile, is by force of a statute of Westminster the second, made in the time of Edward the first. For at the common law before the said statute, all inheritances were fee simple. So all the gifts hitherto specified within the said statute, were fee simple conditionally, as hath been said by the rehearsall of the statute. Also note by the same statute tenant in the taile is said in two manners, that is to say, tenant in taile generall, and tenant in taile speciall.

Tenant in taile generall, is where Lands or Tenements be given to a man and to his heirs of his body begotten: In this case it is said generall taile, for that that whatsoever woman that the tenant taketh to wife, if he have many wives, and by each of them hath issue, yet each one of these issues by possibility may inherite the tenements by force of the said gift, because that every such issue is of his body ingendred.

In the same manner it is where lands and tenements

nements be given to a woman and to the heires comming out of her body, howbeit that she have many husbands, yet the issue that she may have by each husband, may inherite as issue in the taile, by force of such gifts. And therefore such gifts be called generall taile.

Tenant in taile speciall, is where Lands and Tenements be given unto a man and his wife and the heires of their two bodies begotten. In such case none may inherite by force of such gift, but those that be ingendred between them two, and it is called speciall taile, for that if the wife die, and he taketh another wife and hath issue, the issue of the second wife shall never inherite by force of such gift: No, nor the issue of the second husband if the first husband dye.

In the same manner it is, where Lands and tenements be given by a man unto another with a wife, which is the daughter or cosin to the giver in Frankmariage, which gift hath inheritance by these words (Frankmariage) unto it annexed, howbeit that it be not expressly said or rehearsed in the gift, that is to say, that these Donees shall have these Lands or Tenements to them and to their heires between them two ingendred, and this is also speciall taile, for that the issue of the second wife may not inherite.

And note well, that this word Taile, is to say, to set unto some certainty, or else limit unto some certaine inheritance: And for that that it is limited and set in certaine, what issue shall inherite by force of such gifts, and how long that the inheritance shall indure. Therefore it is called

led in Latine, Feodum taliatum, i. hæreditas in quandam certitudinem limitata. For if tenant in generall taile dye without issue, the donor or his heires shall enter as in their reversion: In the same wise it is of the tenant in the taile speciall, &c. For in every gift of the taile without more saying, the reversion of fee simple is in the donor.

And the donees and their heires shall do to the donor and to his heires such services as the donor doth unto the Lord next above: Except the donees in frankemarriage, which shall hold quietly from every manner service, (unlesse it be for Fealty) untill the fourth degree be past. And after that the fourth degree is past, the issue in the fifth degree, and so forth the other issues after him, shall hold of the donor, and of his heires as they had ober, as is aforesaid.

And the degrees in franke marriage shall be accompted in such manner, that is to say, from the donor to the donees in franke marriage the first degree. for that that the wife, that is one of the donees ought to be daughter, sister, or other cosin to the donor: And from the donees unto their issue shall be accounted the second degree: And from their issue unto their issue, the third degree, &c.

And the cause is, for that after every such gift, the issues that come of the donor, and the issues that come of the donees after the fourth degree past of both parties in such forms to be accounted, may betwixt them by the Law of holy Church intermarry. And that the donee in franke

marriage

marriage shall be the first degree of the foure degrees, a man may see in a plea upon a Writ of Right of Ward, Anno 31. Edward 3 where the plaintiffe pleadeth that his arel or Grandfather was seised of certaine Lands &c. And that he held of another by Knights service, &c which gave the land unto one Ralph Holland with his sister in frankmarriage, &c And also these tailes before said be specified in the said statute of Westminster the second.

And there be divers other estates in the taile, howbeit that they be not specified by expresse words in the said Statute, but they be taken by the equity of the statute: As if Lands be given unto a man and to his heires males of his body ingendred, in such case his heire male shall inherite, and the issue female shall never inherite: yet in these other tailes aforesaid it is otherwise. In the same manner it is if Lands be given to a man and to his heires females of his body ingendred In this case his issue females shall inherite by force and forme of the said gift, and not the issue male, for that in such cases where the gift is who ought to inherite, and who not, the will of the donor shall be observed.

And in case where lands be given unto a man and to his heires males issuing of his body, and he hath issue two sons and deceaseth, the elder son entreth as heire male, and hath issue a daughter and deceaseth, his brother shall have the Land and not the daughter, for that the brother is heire male. But it shall be otherwise in these other tailes aforesaid, which be specified in the

the said statute, the daughter shall inherite before the brother.

And if Lands be given unto a man, and to his heires males of his body ingendred, and he hath issue a daughter, which hath issue a son and deceaseth, and after that the donee deceaseth: in this case the son of the daughter shall not inherite by force of the taile for that, whosoever shall inherite by force of a gift in the taile made unto the heires males, behoveth to convey his discent alway to the males. Mich. decimo octavo Edwardi tertii fol. 25. But in such case the donor shall enter, for that the donee is dead without issue male in the law. Inasmuch that the issue of the daughter may not convey to him the discent by heire male. And in the same manner it is, where lands be given to a man, and to his wife, and to his heires males of their two bodies ingendred.

Also, if Tenements be given to a man, and his wife, and to the heires of the body of the man ingendred, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

And if lands be given to the husband and to the wife, and to the heires of the husband which he ingendreth of the body of his wife: In this case the husband hath estate in the speciall taile, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husband ingendred: then the wife hath estate in the speciall taile, and to the husband but for terme of life. But if Lands be

given

given to the husband and the wife, and to the heires that the husband ingendreth on the body of the wife: in this case both have estate in the taile, for that this word (heires) is limited no more to the one than to the other.

Also, if Lands be given to a man and to his heires that he ingendreth on the body of his wife: In this case the husband hath estate in the taile speciall and the wife nothing.

Also, if a man have issue a son, and deceaseth, and the land is given to the son, and to the heires of the body of his father ingendred, this is a good taile, and yet the father was dead at the time of the gift.

Also there be many other estates in the taile by the equity of the said Statute, that be not specified here. But if a man give Lands or Tenements to another, to have and to hold to him and to his heires males, or to his heires females, he to whom such gift is made hath fee simple, for that it is not limited by the gift of what body the issue male or female shall be, and so it may not in any thing be taken by the equity of the said statute, and therefore he hath fee simple.

Tenant in taile after possibility of issue extinct.

TEnant in the taile after possibility of the issue extinct, is whereas Lands or Tenements be given unto a man and to his wife in speciall taile, if one of them decease without issue he that surviveth is tenant in the taile after possibility of issue extinct. And if they have issue,

issue, during the life of the issue, he that surviveth shall not be said Tenant in the taile after possibility of issue extinct yet if the issue decease without issue so that there be none alive that may inherite by force of the taile then he that survi-veth of the donees is tenant in the taile after possibility of issue extinct.

Also, if Land is be given to a man and to his his heires that be ingendred on the body of his wife. In this case the wife hath nought in the Tenements, and the husband is seised as donee in speciall taile. And in this case if the wife decease without issue of her body ingendred by her husband, then the husband is tenant in the taile after possibility of issue extinct.

And note well, that none may be tenant in the taile after possibility of issue extinct, but one of the donees, or the donee in speciall taile. for the donee in generall taile may never be said tenant in the taile after possibility of issue extinct, for that alway during his life, he may by possibility have issue that may inherit by force of the same taile. And so in the same manner the issue that is heire unto the donees in a spectall taile, may not be said tenant in taile after possibility, &c causa qua supra.

And tenant in taile after pessibility of issue extinct shall never be punished of wast, for the inheritance that once was in him. Anno 10. Hen. 6. fol. 1. But he in the reversion may enter if he doth alien in fee, An. 45. Ed. 3 fol. 22.

Tenant

Tenant by the Curtesie of England.

TEnant by the Curtesie of England. is where a man taketh a wife seised in fee simple, or in fee taile generall, or as heire in the taile speciall, and hath issue by the same wife male or female borne alive, the issue after being dead or alive, if the wife decease the husband shall hold the same during his life by the Law of England, and this is called tenant by the Curtesie, for that it is not used in any other Realme but only in England. And some say that he shall not be said tenant by the Curtesie, but if the child that he hath by his wife be heard cry, for by the cry is the proofe that the child that he had by his wife was borne alive.

Tenant in Dower.

TEnant in Dower is, where a man is seised of certaine lands or tenements in fee simple or in generall taile, or as heire in the taile speciall, and taketh a wife and deceaseth, the wife after the decease of her husband shall be endowed of the third part of such lands or tenements that were her husbands any time during the coverture, to have and to hold to the same wife in severalty, by meets and bounds for terme of her life, whether she have by her husband issue or none, and of what age that the wife be, so that she passe the age of nine yeares at the time of her husbands death, or else she shall not be endowed.

And note well, that by the common Law the wife

wife shall not have for her dower but the third part of the tenements, which were her husbands during the Espousels By custome of some Countrey she shall have the halfe, and by custome of some Townes, or Borough, she shall have the whole: And in all these cases she shall be said tenant in Dower.

Also there is two other manner of Dowers, that is to say, Dower called dowment at the Church doore, and Dower called dowment by the fathers assent Dowment at the Church doore is, where a man of full age is seised in fee simple which shall be wedded unto a wife, when he commeth to the Church doore, and there after affiance and truth pleight made between them, endoweth his wife of his whole land, or of the halfe, or lesse parcell, and there openly declareth the quantity, and the certainty of his land that she shall have for her Dower: In this case the wife after the death of her husband shall enter into the said quantity of land, of which her husband endowed her, without the assignment of any man. Dowment by the fathers assent is, where the father is seised of Lands or tenements in Fee, and his son and heire apparent (when he is wedded) endoweth his wife at the Church doore of parcell of the lands, or tenements of his Fathers by the assent of his father, and assigneth the quantity of the parcels: In this case after the death of the son, the wife shall enter into the same parcell without the assignment of any other. But it hath been said in this case, that it behoveth the wife to have a deed of the father, proving his assent and consent of such endowment.

ment. And if after the death of her husband she enter and agree to any such dower of the said two dowers at the Church doore, then she is concluded to claime any other Dower by the common law of any Lands or tenements, which were of the said husband. But if she will, she may refuse such dower at the Church doore and then she may be endowed after the course of the common Law. And note well, that no wife shall be endowed of the fathers assent, in the forme aforesaid, save where the husband is son and heire apparant to his father.

Inquire of these two cases of endowment at the Church doore &c. if the wife at the time of the death of her husband passe not the age of nine yeares, if she shall have such dower or no.

And note well, that in all cases where the certainty appeareth, what Lands or Tenements the wife shall have for her Dower, the wife may enter after the death of her husband, without assignment of any other: But where the certainty appeareth not, as to be endowed of the third part, to have in severall, or to be endowed of the halfe after the custome to hold in severalty: In such cases it behoveth that her Dower be unto her assigned after the death of her husband, because it is not limited before the assignment, what parts of Lands or Tenements she shall have for her Dower. But if there be two Joyntenants of certaine Lands in Fee, and the one alieneth that that to him pertaineth and belongeth, to another in Fee, which taketh a wife and after dyeth: In this case the wife for her

dower shall have the third part of the halfe that her husband purchased, to hold in common, and occupy in common, as her part amounteth, with the heire of her husband, and with the other Joyntenant which alien not, for that in such case her Dower may not be alligned by meets and bounds.

And it is to be understood, that the wife shall not be endowed of lands or tenements that her husband joyntly held with another at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesaid. And it is to wit, that if the tenant in taile endow his wife at the Church doore as is aforesaid, that shall serve for little or nought to his wife, for that, that after the death of her husband the issue in the taile may enter upon the possession of the wife, and so may he in reversion if there be no issue in the taile alive.

Also if a man seised in Fee simple being within age, endow his wife at the Church doore, and dieth, and the wife entreth: In this case the heire of the husband may put her out. But otherwise it is as it seemeth, where the father is seised in Fee, and the son within age endow his wife of his fathers assent, the father then being of full age.

And there is another Dower which is called Dowment De la pluis beale. And that is in such case, that a man is seised of forty acres of land, and he holdeth twenty of the said forty acres of one man by Knights service, & the other twenty acres of another in socage, and taketh a wife, and hath issue a son, and dieth, his son being within

within the age of fourteen yeares, and the Lord, of whom the land is holden by Knights service, entreth into the twenty acres of land holden of him, and them hath and occupieth as Warden in Chivalry during the childs nonage, and the childs mother entreth in the remnant, and it occupieth as garden or Warden in Socage: If in this case the wife bring a writ of Dower against the warden in Chivalry, to be endowed of the tenements holden by Knights Service in the Kings Court, or in any other Court, the Garden in Chivalry may plead in such case all the matter, and shew how the wife is warden in Socage, as is aforesaid, and pray that it may be adjudged by the Court, that the wife endow her selfe of the most faire, called Plain beale, of the tenements that she hath as warden in Socage, after the value of the third part that she claimeth to have of the tenements in Chivalry by her writ of Dower, and if the wife may not gainsay it, then the judgement shall be made, that the warden in Chivalry shall hold the lands holden of him during the nonage of the child quite from the woman, &c. And that the woman may endow her selfe of the most faire part of the lands that she hath as warden in Socage to the value of the third part that the warden in Chivalry hath, &c.

And after such judgement given, the wife may take her neighbours, and in their presence endow her selfe by meets and bounds of the fairest part of the tenements that she hath as warden in Socage, to the value of the third part of the lands that the Warden in Chivalry hath,

and that to have and hold for terme of her life. And such Dower is called Dower of the fairest part or De pluis beale.

With this agreeth P. 45. Edw. 3. fol. 4. But there it was said, that after the time that the heire comes to his full age, the wife shall have a new action of Dower against the heire, to be endowed of the third part of all that the man dyed seised. And note well, that such dowment may not be, but where the judgement is given in the Kings Court, or in some other Court. And the wife may do this for salvation of the estate of the warden in Chivalry during the nonage of the child. And so ye may see five manner of dowers, that is to say, Dower by the common Law, Dower by Custome, Dower at the Church dore, Dower of the Fathers assent, and Dower of the most faire. And remember that in every case where a man taketh a wife seised of such estate of tenements, &c. so that the issue that he hath by his wife may by possibility inherite the same tenements of such estate that the wife hath, as heire to the wife: In such case after the wife is dead, he shall have the same tenements by the Curtesie of England, and otherwise not.

And also in every case where the wife taketh an husband seised of such estate of tenements &c. so that by possibility it may happen the wife to have some issue by her husband, and that the same issue may by possibility inherit the same tenements of such estate that the husband had as heire to his father, of such tenements she shall have her dower, and otherwise not. For if the tenements

tenements be given unto a man and to his heirs that he getteth on his wifes body, in such case the wife hath nought in the tenements, and the husband hath estate but as donee in special taile: Yet if the husband dye without issue, the same wife shall be endowed of the same tenements, for that the issue that she by possibility might have had by the same husband, may inherite the same tenements. But if the wife decease, living the husband, which after taketh another wife, the second wife shall not be endowed in this case; Causa qua supra.

A man was seised of certaine Lands, and tooke a wife, and after alieued the same Lands with warranty, and after the Feoffor and the Feoffee died, and the wife of the Feoffer bringeth an action of Dower against the issue of the Feoffee, and he voucheth the heire of the Feoffer, and during the voucher and not termined, the wife of the Feoffee bringeth an action of dower against the heire of the Feoffer, and demandeth the third part of all that her husband was seised, and would not demand the third part of those two parts that her husband was seised, it was adjudged that she should have no judgement until the time that the other plea were determined.

And also note that Vavisor saith, that if a man be seised of lands and committeth Felony, and alieneth, and after is attainted, the wife shall have good action of dower against the Feoffee. But if it be escheated unto the King or unto the Lord, she shall have no writ of dower. And so see the diversity, and inquire the cause.

Tenant for terme of life.

TEnant for terme of life is, where a man letteth lands or tenements to another for terme of life of the lesee, or for terme of life of another man: In such case the lesee is tenant for terme of life. But by common language, he that holdeth for terme of his own life, is called tenant for terme of life, and he that holdeth for terme of another mans life, is called Tenant for terme of another mans life. And it is to be understood, that there is Feoffer and Feoffee, Donor and Donee, Lessour and Lessee. The Feoffer is properly where a man infeoffeth another in any lands or tenements in fee simple, he that maketh the Feoffment is called the Feoffer, and he to whom the Feoffment is made, is called the Feoffee. And the donor is properly, where a man giveth certaine Lands or Tenements to another in the taile, he that maketh the gift is called donor, and he to whom the gift is made is called donee. And Lessour is properly where a man letteth to another certaine lands or tenements for terme of life, for terme of yeares, or to hold at will, he that maketh the Lease is called Lessour, and he to whom the Lease is made is called Lessee: and every one that hath estate in Lands or Tenements for terme of his own life, or for term of another mans life is called tenāt of freehold. And none of lesse estate may have freehold, but they of greater estate may have freehold, for tenant in fee simple hath freehold, and tenant in the taile hath also freehold.

Tenant

Tenant for terme of yeares.

TEnant for terme of yeares is, where a man letteth Lands or tenements to another for terme of certaine yeares after the number of yeares that is accorded betweene the Lessor and the Lessee, and when the Lessee entreth by force of the lease, then is he tenant for terme of yeares, and if the Lessour in such case reserve to him a yearely rent upon such a lease, he may chuse for to distraine for the rent in the tenements letten, or else he may have Action of debt for the arrerages against the Lessee. But in such case it behoveth that the Lessour be seised in the same tenements at the time of his Lease, for it is a good plea for the Lessee to say, that the Lessor had nothing in the tenements at the time of the lease, except the lease be made by deed indented, in which case then such plea lyeth not for the Lessee to plead.

And it is to be understood, that in a Lease for terme of yeares, by deed or without deed, it needeth no livery of seisin to be made to the Lessee, but he may enter whensoever he will by force of the same Lease. But of Feoffments made in the Country or gifts in the taile, or Leases for terme of life, in such cases where freehold shall passe, if it be by deed or without deed, it behoveth to have livery of seisin, &c. But if a man let lands or tenements by deed or without deed for terme of yeares, the remainder over to another for terme of life, or in the taile, or in fee, then in such case it behoveth that the Lessor make livery of seisin to the Lessee for terme of

yeares, or else there shall nothing passe to them in the remainder, though the Lesse enter in the tenements. And if the termor in such case enter before any such livery of seisin made unto him, then is the freehold & the reversion in the Lessor. But if he make any livery of seisin unto the Lessee, then is the freehold with the fee to them in the remainder after the forme of the grant, and will of the Lessor.

And if a man will make a feoffement by deed or without deed, of Lands or Tenements that he hath in many Townes in one Shire, if the livery of seisin be made in one parcell of the tenements in one Town in the name of all, it sufficeth for all the other lands or tenements comprehended in the same feoffement, in all other townes in the same Shire. But if a man make a deed of feoffement of lands or tenements in divers Shires, there it behoveth him to have in every Shire a livery of seisin. And in some case a man shall have by the grant of another fee simple, fee taile, or freehold, without livery of seisin. As if two men be, and each of them is seised of a quantity of land within one shire, and the one granteth his land to the other in exchange for that land that the other hath, and in the same manner the other granteth his land unto the first grantor in exchange for the land that the first grantor hath: In this case each may enter in the others lands so taken in exchange, without any livery of seisin. And such exchange made by words, of tenements within the same Shire without any writing is good enough. And if the Lands or tenements be in divers shires, that is

to

to say, if that the one have in one shire, and that the other have in another shire, it behooveth to have a deed indented made betweene them of such exchange.

And note, that in exchanges it behoveth that the estates that both parties have in the lands so exchanged, be equall: For if the one willeth and granteth that the other shall have his land in the taile, for the land that he hath of the grant of the other in fee simple, though the other agree to that, yet this exchange is but void, for that the estates be not even.

In the same manner it is where it is granted and agreed betweene them, that the one shall have in the one Land fee taile, and the other shall have in the other land but terme of life. Or if one shall have in the one Land fee taile generall, and the other in the other Land fee taile especiall, &c. So alway it behooveth that in exchange the estate of both parties be even, that is to say, if the one have fee simple in the one Land, that the other shall have such estate in the other Land, and if the one have fee taile in the one land, then the other shall have likewise in the other Land. Et sic de aliis statibus. But it is nothing to charge of the even value of the lands, for though that the land of the one is so much more in value than the land of the other this is nothing to purpose, so that the estates made by the exchange be even, and in exchange by two grants: for every party granteth his Land to the other in exchange, and in each of their grants mention shall be made of the exchange.

And if a man let land to another for terme of yeares,

yeares, though the Lessor dye before the Lessee enter into the tenements, yet may he enter into the tenements after the death of the Lessor, for that that the Lessee by force of the Lease hath right incontinēt to have the tenements after the forme of the Lease. But if a man make a deed of Feoffement unto another, and a letter of attorney to a man to deliver to him seisin by force of the same deed, yet if the livery of seisin be not made in the life of him that made the deed, it availeth not, for that the other hath no manner of right to have the tenements after the purport of the deed before the livery of seisin, &c. And if no livery be made, then after the death of him that made the deed, the right of such tenements is incontinently in his heire, or in some other. Also if tenements be let to a man for terme of halfe a yeare, or for terme of a quarter of a yeare &c. In such case, if the Lessee make waste, the Lessor shall have against him a Writt of Waste, and the Writ shall say, Quod tenet ad terminum annorum. But he shall have a spectall declaration upon the truth of this matter, and the plea shall not abate the Writ, for that that he may have no other Writ upon the matter. Anno 7. Hen. 7. fol. 1.

Tenant at will.

TEnant at will is, where Lands or Tenements be letten by a man unto another, To have and to hold to him at the will of the Lessor, by force of which Lease the Lessee is in possession: In such case the Lessee is called tenant at will, for that he hath no certaine or sure estate,

eſtate, for the Lessor may put him out at what time it pleaſeth him: yet if the Lessee ſow the land, and the Lessor (after the ſowing, and before that his graines be ripe) put him out, yet ſhall the Lessee have his graines, and ſhall have free egreſſe and regreſſe to reap and to carry his graines, for that he wiſt not at what time his Lessour would enter upon him. Otherwiſe it is if tenant for terme of yeares before the end of his terme ſoweth the Land, and the terme end before that his graines be ripe: In this caſe the Lessor, or he in the reverſion ſhall have the graines, for that the termor knew well the certainty of his terme, and when his terme ſhould be ended.

Alſo, if a houſe be let to a man to hold at will, by force of which the Lessee entreth into the houſe, within which houſe he bringeth his houſhold ſtuffe, and after the Lessor putteth him out, yet ſhall he have free entry, egreſſe, and regreſſe in the ſame houſe by reaſonable time to carry his goods and houſhold ſtuffe. And if a man be ſeiſed of a houſe in fee ſimple, fee taile, or for terme of life, the which hath certaine goods within the ſame houſe, and maketh his executors and deceaſeth, whoſoever after his death hath the houſe, yet ſhall his executors have free entry, egreſſe, and regreſſe to carry out of the houſe the goods of the Teſtator by a reaſonable time.

Alſo, if a man make a deed of Feoffement unto another of certaine land, and delivereth to him the deed, but no livery of ſeiſin: in this caſe he to whom the deed is made may enter into the Land, and hold and occupie it at the will of him

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that made the deed, for that, that it is proved by the words of the deed, that it is his will that the other shall have the land. But he that made the deed may put him out when he will.

Also if a house be let to hold at will, the Lessee is not holden to sustaine or repaire the house, as tenant for terme of yeares is holden to do. But if the Lessee at will make voluntary waste, as in pulling down of houses, or in cutting or selling of trees, It is said that the Lessor shall have for that against him an action of trespasse. As if I deliver to a man my sheepe to dung or marle his land, or mine oxen to eare his land, and he slayeth the beasts, I may well have an action of Trespasse against him notwithstanding the delivery.

Also if the Lessor upon such lease at will reserve unto him a yearely rent, he may distraine for the rent behind, or have for that an action of Debt at his own choise, *Hill.* 6. Rich. 2. in a Replevin.

Tenant by Copy of Court Roll.

TEnant by Copy of Court Roll is as if a man be seised of a Mannor, within which Mannor there is a custome, and hath been used in time out of mind, that certaine Tenants within the same Mannor have used to have Lands or Tenements to hold to them and to their heires in fee simple, or in fee taile, or for terme of life, &c. at the will of the Lord, after the customs of the same Mannor: and such a tenant may not alien the land by deed, for then the Lord may

may enter as in a thing forfeit to him. But if he will alien his land to another, him behoveth after some custome, to surrender the tenements in some Court, &c. into the Lords hands, to the use of him that shall have the estate, in such forme, or to such effect.

Ad hanc curiam venit A. de B. & sursum reddidit in eadem Curia, unum mesuagium, &c. in manus domini, ad usum E. de A. & hæredum suorum, vel hæredum de corpore suo exeunt. vel pro termino vitæ suæ, &c. Et super hoc venit prædictus E. de A & cepit de domino in eadem Curia mesuagium prædictum, &c. Habendum & tenendum sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ suæ, ad voluntatem domini, secundū consuetudinem manerii, faciend' & reddend' inde redditus debit' servitia, & consuetudines inde prius debit', & de jure consueta, Et dat domino de fine, &c. Et fecit domino fidelitatem, &c. That is to say, A of B. commeth unto this Court and surrendreth in the same Court a mease, &c. into the hands of the Lord, to the use of E. of A. and his heires, or the heires issuing of his body, or for terme of life, &c. And upon that, commeth the foresaid E. of A. and taketh of the Lord in the same Court, the aforesaid mease &c: To have and to hold to him and to his heires, or to him and to his heires issuing of his body, or to him for terme of life, at the Lords will, after the custome of the Mannor to do and yeeld therefore rents, debts, services, and customes thereof before due and accustomed, &c. and giveth the Lord for a fine, &c. and maketh unto the Lord his fealty &c.

And

And such tenants be called tenants by Copie of Court Roll, for that they have no other evidences concerning their Tenements, but the Copies of the Court Rolles: And such tenants shall not implead, nor be impleaded for their tenements by the Kings Writ. But if they will implead other for their Tenements, they shall have a plaint made in the Court of the Lord in such forme or to such effect. A. de B. queritur versus C. de D. in placito terræ, videlicet, de uno messuagio, quadraginta acris ter', quatuor acris prati, &c. cum pertinentiis. Et facit protestationem sequi querelam istam in natura brevis Domini Regis Assisæ mortis antecessoris ad communem Legem, vel brevis Domini Regis Assisæ novæ disseisi. ad communem Legem. That is to say, A.B. complaineth against C. D. of a pire of Land: That is to say, of a mease, and forty acres of Land, foure acres of medow, &c with the appurtenances. And maketh protestation to sue his plaint in nature of the Kings Writ of Assize of the death of his Ancestor at the common Law, or by a Writ of our soveraigne Lord the King, of Assise of novel disseisin at the Common Law, or in nature of some other Writ &c. pledges to prosecute F. G. &c. And though that some such tenants have inheritance after the customs of the manner, yet they have none estate but at the Lords will and after the course of the Common Law: for it is said, if the Lord put them out, they have no other remedy but to sue unto the Lord by petition: For if they had any other remedy they should not be said tenants at the Lords will, after the custome of the Mannor,

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but the Lord will not breake the customs that is reasonable in such cases. But Brian chiefe Justice saith, that his opinion hath alwaies been, and alwaies shall be, if such a tenant by customs (paying his services) be cast out by the Lord, he he shall have an action of trespasse against him, H. 2. E. 4. fol. 8o. And likewise was the opinion of Danby chiefe Justice M. 7. E. 4. fol. 19. for he saith, that the tenant by the custome, is as well inheritable to have the land after the custome, as well as he that hath franktenement by the common Law.

TEnants by the Yard, be in such nature as tenants by Copy of Court Roll: But the cause for which they be called tenants by the Rodde, or Yard, is, for that when they will surrender their Tenements into the Lords hand, to the use of another, they shall have a little yard or rodde, by the custome and use in their hands, which they shall deliver unto the Steward or Bayliffe, after the Custome and use of the manor, and he that shall have the land, shall take the same land in the Court, and his taking shall be entred in the Roll. And the Steward, or the Bayliffe, according to the custome, shall deliver unto him, that taketh the land, the same yard, or another yard in the name of seisin. And for this cause they be called Tenants by the Yard. But they have none other evidence but Copy of the Court Roll.

And also in divers Lordships and Mannors where is such a custome, if such a tenant that holdeth by the Customs will alien his Lands or Tenements, he may surrender his lands unto

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the Bayliffe, or to the Reeve, or to two honeſt men of the ſame Lordſhip, to the uſe of him that ſhall have the land, to have in fee ſimple, fee taile, or for terme of life, &c. and all that ſhall be preſented at the next Court And then he that ſhall have the Land by Copy of Court Roll, ſhall have the ſame Land after the intent of the ſurrender. And it is to wit, that in divers Lordſhips, and divers Mannors, there be made diuers cuſtomes in ſuch caſes, as to take tenements, and as to plead, and as touching other things and cuſtomes to be done and all that that is not againſt reaſon, may well be admitted and alleawed. And ſuch tenants that hold after the cuſtome of a Seigniory, or after the cuſtome of a Mannor though they have eſtate of inheritance after the cuſtome of the Lordſhip, or of the Mannor, yet becauſe they have not any freehold by the courſe of the Common Law they be called tenants of baſe tenure.

And divers diverſities there be between a tenant at will, which is in by the leaſe of his Leſſor by the courſe of the common Law, and tenant after the cuſtome of the Mannor in the forme aforeſaid. For tenant at will after the cuſtome may have eſtate of inheritance, as it is aforeſaid at the Lords will after the cuſtome and uſage of the Mannor: But if a man have lands or tenements which be not within ſuch Mannor or Lordſhip where ſuch cuſtome hath been uſed in the forme aforeſaid and will let ſuch lands or tenements to another to have and to hold to him and to his heires at the will of his Leſſor, theſe words, to the heires of the Leſſee be void, for this

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is the cause, if the Lessee dye, and his heire enter, the Lessor shall have a good action of trespasse against him but not so against the heire of the tenant by the custome in any case, &c. for that the custome of the Mannor in some case may help him to bar his Lord in an action of Trespasse.

Also tenant by the custome in some places ought to repaire and sustaine the houses, and the other tenant at will ought not. Also one by the custome shall do Fealty, and the other not. And divers other diversities there be betweene them.

Thus endeth the first Book.

Homage.

HOmage is the moſt honourable ſervice, and moſt humble ſervice of reverence that a Franktenant may do to his Lord: For when the Tenant ſhall make Homage to his Lord, he ſhall be ungirt, and his head uncovered, and his Lord ſhall ſit, and the tenant ſhall kneele before him on both his knees, & hold his hands joyntly together between the hands of his Lord, and ſhall ſay thus: I become your man from this day forward of life and limme, and of earthly worſhip, and unto you ſhall be true and faithfull, and beare you faith for the tenements that I claime to hold of you, (ſaving the faith that I owe unto our Soveraign Lord the King.) And then the Lord ſo ſitting ſhall kiſſe him.

But if an Abbot, or Prior, or any other man of Religion ſhall make homage unto his Lord, he ſhall not ſay, I become your man, for that he hath profeſſed himſelfe only to be Gods man: But he ſhall ſay thus, I do you homage, and unto you ſhall be true and faithfull, and beare you faith for the tenements that I claime to hold of you: Saving the faith that I owe unto

unto our Soveraigne Lord the King.

Also, if a woman sole shall make Homage unto the Lord, shee shall not say, I become your woman. for that is not convenient for a woman to say that shee shall become a woman to any but only to her husband when she is wedded: But she shall say, I make unto you homage, and to you shall be true and faithfull, and shall beare you faith for the tenements that I hold of you, saving the faith that I owe to our Soveraigne Lord the King

But if a man have severall tenancies which he holdeth of severall Lords, that is to say, every tenancy by Homage: Then when he maketh Homage unto one of his Lords, he shall say in the end of his Homage, Saving the faith that I owe unto the King. and unto my other Lords.

And note well, that none make homage, but such as have estate in fee simple, or in fee taile in his own right, or in any other mans right: For it is a ground in the Law, that he that hath estate but for terme of life, shall make no homage, nor take no homage.

For if a woman have lands or tenements in fee simple, or in fee taile, which she holdeth of her Lord by Homage, and taketh an husband, and hath issue, then the husband in the life of the wife shall make homage, for that he hath title to have the land by the curtesie, if he survive his wife: And also he holdeth in the right of his wife But afore issue between them, the Homage shall be made in both their names: But if the wife decease before homage made by the husband

in the wives life, and the husband holdeth himselfe in as tenant by the Curtesie, he shall make no Homage unto his Lord, for that he hath then no estate but for terme of life. More shall be said of homage in the tenure of homage antestreil.

Fealty.

FEalty is as much to say, as Fidelitas in Latine: and when a franktenant shall make Fealty unto the Lord, he shall hold his right hand upon a book, and shall say thus:

Heare you this my Lord, that I unto you shall be faithfull and true, and beare you faith for the lands and tenements, that I claime to hold of you, and truly to you shall do the customes and services that I ought to do unto you at termes assigned, as God me help and all his Saints, and then he killeth the booke. But he shall not kneele when he maketh his fealty nor shall make such humble reverence, as is afore-said in Homage. And great diversity there is had betwixt making of Fealty, and of Homage: for Homage may not be made but to the Lord himselfe. But the Steward of the Lords Court, or the Bailife may take Fealty for the Lord.

Also tenant for terme of life shall make fealty, and yet he shall make no homage. And divers others diversities there be betwixt Homage and Fealty.

Also a man may see a good note, Anno 15. Ed. 3. where and how a man and his wife made homage

homage and fealty in the common banke, which is written in such formes, Note, that John Lewknor, and Elizabeth his wife made Homage unto William Thorpe in this manner: The one and the other held joyntly their hands between the hands of William Thorpe, and the husband said in this wise: We unto you make homage, and beare you faith for the lands we hold of A. your conusor, which hath granted your services in B. and in C. and the other towns, &c. against all men (saving the faith that we owe unto our Soveraigne Lord the King, and to his heires, and to our other Lords) and the one and the other killed him. And after they made Fealty, and the one and the other held their hands together upon a book, and the husband said the words, and both kissed the book. More shall be said of Fealty in the tenure of Socage, and in the tenure of Frankalmoigne, and in the tenure of Homage ancestrell.

Escuage.

Escuage is called in Latine Scutagium, that is to say, service of shield. And such a tenant that holdeth his land by Escuage, holdeth by Knights service. And also it is commonly said, that some hold by a fee of Knights service, and some by the halfe fee of Knights service, &c. And it is said, that when the King maketh a voyage royall into Scotland for to subdue the Scots, he that holdeth by a Fee of Knights service, bindeth to be with the K. by 40. dates, well and convenably arrayed for the war. And

likewise he that holdeth his land by the halfe of a fee by Knights service, ought to be with the King by twenty daies. And he that holdeth his Land by a fourth part of a fee by Knights service, him behoveth to be with the King by ten daies, and so after the quantity, he that hath more, to do more, and he that hath lesse, to do lesse.

But it appeareth by the pleas & arguments made in a good plea upon a Writ of Detinue of an Obligation, brought by one Henry Gray, Anno 7. E 3. fol. 29. that it needeth not to him that holdeth by Escuage to go himselfe, if he will find an able person for the war convenably arrayed for the war, to go with the King: and that seemeth good reason: for it may be, that he that holdeth by such service is sick, in such wise that he may not go nor ride.

And also an Abbot, or any other man of religion, or a woman sole that holdeth by such service, ought not in such case to go in proper person. And Sir William Herle that time chiefe Justice of the common Pleas said in the said plea, that Escuage shall not be granted, but where the King himselfe goeth in proper person. And so it abode in judgement of the same plea, if these forty daies shall be accounted from the day of the Muster of the Kings host made by the Commons and the Kings commandement: Or else from the day that the King first entreth into Scotland, &c. therefore inquire of this matter.

And after such voyage into Scotland it is commonly said, that by the authority of Parliament,

ment, the Escuage shall be set and put in certaine: that is to say, a certaine sum of money how much every one that holdeth by a whole fee of Knights service, which was not in his own proper person, nor none other for him with the King, shall pay unto the Lord, of whom he holdeth his land by Escuage. As put case that it was ordained by authority of Parliament, that every one that holdeth by a whole fee by Knights service, which was not with the King, shall pay to his Lord forty shillings. That he that holdeth by the halfe of a fee by Knights service, shall pay unto his Lord but twenty shillings, and so who more, more, and who lesse, lesse. And some tenants hold, that if Escuage run by authority of Parliament to any sum of money, that they shall pay but the halfe of that sum, and some but the fourth part of that sum. But because the Escuage that they shall pay is not certaine, for that it is at no certaine what the Parliament will assesse the Escuage, they hold by Knights service. But otherwise it is of Escuage certaine, of which shall be spoken of in the tenure of Soccage.

And if a man speake generally of Escuage, it shall be understood by the common speech of Escuage not certaine, which is Knights service: And such Escuage draweth unto him Homage, and Homage draweth unto him Fealty, for Fealty is incident to every manner of service, but to the tenure of frankalmoigne, as it shall be said hereafter in the tenure of frankalmoigne: So as he that holdeth by Escuage holdeth by Homage, Fealty, and Escuage.

And it is to be understood, that when Escuage is so setled by authority of Parliament, every Lord to whom the Land is holden by Escuage, shall have the Escuage so setled by the Parliament, because it is understood by the law, that at the beginning such tenements were given by the Lords to hold by such services to defend their Lords as well as the King, and to set in quiet and rest their Lords against the King of Scots aforesaid. And for that such tenements came first of the Lords, it is reason that they have the Escuage of their tenants.

And the Lords in such case may distraine for the Escuage so assessed, or they may have the Kings writs, directed unto the Sheriffes of the Shire, to leavy such Escuage for them, as it appeareth by the Register fol 88.

But if such tenants that hold of the King by Escuage, which were not with the King in Scotland, the King himselfe shall have the Escuage

Item, in such case aforesaid, where the King maketh a voyage royall into Scotland, and the Escuage is assessed by Parliament, if the Lord distraine his tenant that holdeth of him by service of a whole Knights fee, for the Escuage so assessed, &c. and the tenant pleadeth and will aver that he was with the King in Scotland &c. by forty dales, and the Lord will aver the contrary, it is said that it shall be tried by the certification of the Marshall of the Kings host in writing under his seale, which shall be sent to the Justices.

Homage

Homage, Eſcuage, and Fealty.

TEnure by Homage, Eſcuage, and Fealty, is to hold by Knights ſervice and it draweth unto it Ward, Marriage and Reliefe: For when ſuch a tenant dieth, his heire male being within the age of 21. yeares, the Lord ſhall have the land holden of him unto the age of the heire of 21. yeares, which is called full age: for that ſuch an heire by the underſtanding of the Law, is not able to do Knights ſervice before the age of 21. yeares.

And alſo if ſuch an heire be not married at the time of the death of his Anceſtor, then the Lord ſhall have the ward and marriage of him. But if ſuch a Tenant die his heire female being of the age of fourteene yeares or more, then the Lord ſhall not have the ward neither of the land nor of the body, for that a woman of ſuch age may have a husband able to do Knights ſervice. But if ſuch an heire female be within the age of fourteene yeares and not married at the time of the death of her Anceſtor, then the Lord ſhall have the ward of the Lands holden of him, till the age of ſuch an heire female of 16. yeares: For that it is given by the ſtatute of Weſtm. 1. cap. 12 that by two yeares next following the ſaid twelve yeares, the Lord may tender a convenient marriage without diſparaging of ſuch an heire female. And if the Lord do not tender her ſuch marriage within the ſaid two yeares, then ſhe at the end of the ſaid two

yeares

yeares may enter and put out the Lord. But if ſuch an heire female be married within the age of fourteene yeares in the life of the Anceſtor, and the Anceſtor dye, ſhe being within the age of fourteen yeares, the Lord ſhall have but the ward of the Land, till an end of fourteen yeares of age of ſuch an heire female: And then her husband and ſhe may enter into the land and put out the Lord, for this is out of the caſe of the Statute: Inſomuch that the Lord cannot tender marriage to her that is married, &c. For before the ſaid ſtatute of Weſtm. 1. ſuch iſſue female that was within age of fourteene yeares at the time of the death of her Anceſtor, and after that ſhe had accompliſhed the age of fourteen yeares without any tender of marriage to her by the Lord, ſuch an heire female then might enter into the Land, and put out the Lord, as appeareth by the rehearſall, and by the words of the ſame Statute: So that the ſaid Statute was made in ſuch caſe all for the advantage of the Lord, as it ſeemeth. But yet that at all times it is underſtood by the words of the ſame Statute, that the Lord ſhall not have the ſeiſen yeare after the fourteenth yeare, as is aforeſaid.

And note well, that the full age of the male and female after the common ſpeech is ſaid the age of one and twenty. And the age of diſcretion is ſaid the age of fourteen yeares: for a child at full age, which is wedded within ſuch age to a woman, may agree to the marriage or diſagree.

And if the Warden in Chivalry marry once his

his ward within the age of fourteen yeares, and after the age of fourteene yeares he diſagreeth to the marriage: It is ſaid by ſome ſolks that the child is not holden by the Law to be married another time by this Warden, for that the Warden had once the marriage of him, and therefore he was out of his Ward, as concerning the ward of his body. And when he hath once the marriage of him, and therefore was out of his ward, he ſhall no more have the marriage of him. In the ſame manner it is, if the Warden marry him, and the wife dye, the child being within age of fourteen yeares or one and twenty yeares. And that the child may diſagree to ſuch marriage when he commeth to the age of 14. years, it is proved by the words of the ſtatute of Merton cap. 6 that ſaith thus: De dominis qui maritaverint illos quos habent in cuſtodia ſua, villanis, & aliis, ſicut burgenſibus ubi diſparagentur, ſi tales homines fuerint infra 14 annos, & talis ætatis quod matrimonio conſentire non poſſint, tunc ſi parentes illius, conquerant', dominus ille amittat cuſtodiam illam uſque ad ætatem hæredis. Et omne commodum quod inde recepit fuerit convertatur in commodum hæredis infra ætatem exiſtentis, ſecundum diſpoſitionem parentum, propter dedecus ei impoſitum. Si autem fuerit 14 annorum & ultra quod conſentire poterit, & tali maritagio conſenſerit, nulla ſequatur pœna. And ſo it is proved by the ſame ſtatute that no diſparagement ſhall be, but where that he that hath the Ward marrieth him within the age of 14 yeares.

Alſo it hath been a queſtion how theſe words

ſhould

should be understood: Si parentes conqueran-tur, &c. And it seemeth unto some, that consider-ing the statute of Magna charta cap. 6. that willeth, that hæredes maritentur absque disparagationi, &c. upon which the said Statute of Merton upon this point is grounded, as it seem-eth, and insomuch as it was never seen that any action was brought upon the statute of Merton for such disparaging against the Warden; and if an Action may be taken upon such matter, it shall be taken by common presumption before this time, or at some time to be put in ure, that these words shall be understood in such manner, Si parentes conquerantur, i. Si parentes inter se lamentantur, which is as much as to say, that if the Cousins of such a child have cause to make lamentation and complaint amongst them for the shame done to their Cosin so disparaged, which is in a manner a shame to them all, then may the next Cosin to whom the heritage may not de-scend enter, and put out the Warden in Chival-ry. And if he will not, another cosin of the childs may do it, and he to take the issues and profits unto the use of the child, and of that yeild the child account when he commeth unto his full age. Or else the child within age may enter him-selfe, and put out the Warden, &c. Sed quære de hoc.

Also, there are many other kinds of disparag-ings, which be not specified in the same Stat-ute. As if the heire that is in Ward be married unto one that hath but one foot, or one hand, or else deformed, or lame, or having an horrible disease, or else a great and continuall infirmity:

Or

Or if the heire male be married to a woman past child bearing. And many other causes of disparaging there be, but inquire for them, for it is a good matter to learne. And of heires males that be within age of one and twenty yeares after the death of their Ancestors unmarried: In such case the Lord shall have the marriage of such an heire, and have space and time to tender to him convenable marriage without disparaging within the same time of 21. yeares.

And it is to wit, that the heire in such case may chuse if he will be married, or no. But if the Lord which is called Warden in Chivalry, tender a convenable marriage to such an heire within the age of one and twenty yeares, without disparaging, and the heire refuse, and marry not himselfe within the same age: Then the said Warden shall have the value of the marriage of such an heire. But if such an heire male, marry himselfe within the age of one and twenty yeares, against the will of the warden in Chivalry, then shall the Warden have double the value of the marriage, by force of the statute of Merton aforesaid, as in the same statute is more fully comprised.

And divers tenants hold of their Lords by Knights service, and yet they hold not by Escuage, nor pay no Escuage, as they that hold their land by castleward, that is to say, to keep a Tower of a Castle, or a gaole, or some other place by reasonable warning, when their Lords heare tell that enemies will come, or be come into England And in many other cases a man may hold by Knights service, and yet he holdeth not

not by Escuage, nor payeth no Escuage, as shall be said in the tenure of grand Serjeanty. But in all cases where a man holdeth by Knights service, such services draw to the Lord, ward, and marriage.

And if a tenant that holdeth of his Lord by service of a whole Knights fee dye, his heire being of full age of one and twenty yeares, his heire shall pay unto the Lord C. s. for a relefe. And he that holdeth by the halfe fee shall pay L.s

Also if a man hold his Land of the Lord by the service of two Knights Fees, then the heire at full age at the time of the death of his Ancestor, shall pay to his Lord ten pound for relefe.

Also, if there be grandfather, mother, and son, and the mother dieth living the father of the son, and after the grandfather which held his land by Knights service dieth seised, and the land descendeth to the son of the mother, as heire to the Grandfather, which is within age: In such case the Lord shall have the ward of the land, but not the ward of the heire: For that none shall be in ward of his body living his father, because the father during his life shall have the marriage of his heire apparant, and not the Lord. Otherwise it is if the father be dead living the mother, where the land holden in Chivalry descendeth to the son on the fathers side, &c.

Also if a man be seised of land which is holden by Knights service, and maketh a Feoffement in fee to his use and dieth seised of the use, his heire within age, and no will by him declared,

red, the Lord shall have a Writ of Right, of the body and the land, like as if the tenant had died seised of the demeine. And if the heire be of full age at the death of his Ancestor, in such a case he shall pay relieke, like as if he had been seised of a demeine, and that is by the statute of Anno 4. Hen. 7. cap. 17.

Also there is a Warden in right in Chivalry, and a Warden in deed in Chivalry: Warden in right in Chivalry, is where the Lord because of his Lordship is seised of the ward of the land, and the heire ut supra. Warden in deed in Chivalry, is where the Lord in such case after his seising granteth by deed or without deed, the ward of the land, or of the heire, or of both to another man, by force of which grant the grantee is in possession, then is the grantee called Warden in deed, &c.

Tenure in Socage.

TEnure in Socage is where the tenant holdeth of his Lord the tenancy by certaine service for all manner of services, so that the service be not Knights service: As where a man holdeth his land of his Lord by Fealty and certaine rent for all manner of services: or else where a man holdeth his land by Homage, Fealty, and certaine rent, for all manner of services, for Homage by it selfe maketh not Knights-service.

Also a man may hold of his Lord only by Fealty, and such tenure is Tenure in Socage for every tenure that is not tenure in Chivalry, is

tenure

tenure in Socage. And it is said, that the cause wherefore such tenure is said, and hath the name of tenure in Socage, is this: Quia hoc Socag. idem est, quod servic' Socæ, Et hæc Soca Socæ. idem est quod Caruca, s. one Soke, or one plough land.

And in old time before the limitation of time out of mind, great part of the tenants that held of their Lords by Socage, ought to come with their Ploughs, every of the said tenants by certaine dates in the yeare, to eyle and sow the Lords lands of his own graines: But for that such works were done for the libel-hood and sustenance of their Lords, they were acquitted against their Lord of all manner of services. And for this, that such service was done with their Ploughs such tenure was called Tenure in Socage. And after that such services were changed into divers other manner of services, by consent of the tenants, and by the desire of their Lords, that is to say, into a yearly rent, &c. But yet the name of Socage abideth, and in divers places Tenants yet do such service with their Ploughs unto their Lord, so that all manner of services that be not Tenures in Knights service be called Tenures in Socage.

Also, if a man hold of his Lord by Escuage certaine, that is to say, in such forme, that when Escuage runneth and is assessed by the Parliament to a more sum, or to a lesse sum, that the Tenant shall pay to the Lord but halfe a marke for Escuage, and neither more nor lesse, to how great sum, or little sum that the Escuage runneth in this case because the Escuage is certaine

before

knowe that any Escuage is assessed, &c. such tenure is tenure in Socage, and not Knights service. But where the sum that the tenant shall pay for Escuage, is not certaine, that is to say, where it may be that the sum that the tenant shall pay for Escuage may be at one time more, and another lesse, after that it is assessed &c then such tenure is tenure by Knights service.

Also if a man hold his land for to pay certaine rent to his Lord for Castlegard, such tenure is tenure in Socage. But where the tenant himselfe ought by him, or by any other to make castleward, such is tenure by Knights service.

Also in all cases where the tenant holdeth of his Lord to pay to him any certaine rent, that rent is called Rent-service.

Also in such tenures in Socage. if the tenant have issue and dye, his issue being within the age of fourteen yeares, then the next friend of that heire to whom the heritage may not descend shall have the ward of the land, and of the heire unto the age of the heire of 14 yeares, and such warden is called warden in Socage. For if land descend to the heire by the fathers side, then the mother, or some other nigh cosin of the mothers side shall have the ward. And if land descend to the heire by the mothers side, then the father or the next friend of the fathers side shall have the ward of such lands or tenements. And when the heire commeth to the age of fourteene yeares complete, he may enter and put out his warden in Socage, and occupie the land himselfe if he will. And such warden in Socage shall take no issues or profits of such lands or tene-

ments to his own use, but only to the use and profit of the heire, and of that shall yeeld account when it pleaseth the heire, after that the heire hath accomplished the age of fourteen yeares. But such a Warden upon such account shall have allowance of all his reasonable costs and expences of all things. And if such a Warden marry the heire within age of fourteene yeares, he shall make account to the heire, or to his executors of the value of the marriage, though he took nothing for the value of the marriage, for that it shall be counted his own folly, that he would marry him without taking the value of the marriage, without he marry him to such a marriage that is worth in value as much as the marriage of the heire, &c. Also if any other man that is not a nigh friend, &c. occupy the lands & tenements of the heire as Warden in Socage, he shall be compelled to yeeld account unto the heire, as well as his next friend: For it is no plea for him in a writ of account to say that he is not his nigh friend, &c. But he shall answer whether he occupieth the Lands or Tenements as Warden in Socage, or not. But inquire if after that the heire hath accomplished the age of fourteene yeares, and the Warden in Socage continually occupieth the Land till the heire commeth to the full age of one and twenty yeares. If the heire at his full age shall have an Action of account against the Warden for the time that he hath occupied after the said fourteen yeares, as against his Warden in Socage, or against him as against his bayliffe.

Also if Warden in Chivalry make his executors,

cutors, and dye, the heire being within age, &c. The executors shall have the ward, during the nonage. But if the Warden in Socage make executors and dye, the heire being within the age of fourteen yeares, his executors shall not have the ward, but another nigh friend to whom the heritage may not descend, shall have the ward. And the cause of diversity is, for that the Warden in Chivalry hath the ward to his proper use, and the Warden in Socage hath not the ward to his own use, but to the use of the heire. And in such case, where the Warden in Socage dieth before any such account made by him, the heire is of that without remedy, for that no writ of account lyeth against the executors, but only for the King.

Also the Lord, of whom the Land is holden in Socage after the death of his tenant shall have reliefe in such forme. If the Tenant hold by Fealty, and certaine Rent to pay yearely, &c. If the termes of payment be to pay by two termes of the yeare, or by foure termes of the yeare, the Lord shall have of the heire of his Tenant, as much as the rent amounteth that he should pay by yeare. As if the Tenant held of the Lord by Fealty, and ten shillings of rent, payable at certaine termes of the yeare, then the heire shall pay to the Lord ten shillings for reliefe above ten shillings that he shall pay for the rent. Looke more in the Statute of Anno 19. Hen. 7. cap. 15.

And in such case after the death of the tenant, such reliefe is due to the Lord incontinent, of what age soever the heire be, for that such a Lord

may not have the ward of the body nor the land of the heire. And the Lord in such case ought not to abide the payment of his relefe, after the termes and dates of payment of the rent, but he ought to have his relefe incontinent: And therefore he may incontinent distraine after the death of his tenant for the relefe.

In the same manner it is, where a tenant holdeth of his Lord by Fealty and by a pound of Comin or a pound of Pepper by the yeare, and the Tenant die, the Lord shall have for his relefe a pound of Comin, or a pound of pepper.

In the same manner it is, where the tenant holdeth to pay by the yeare a certaine number of Capons or Hens. or a paire of Globes, or certaine bushels of wheat, and such other manner things. But in some case the Lord ought to abide to distraine for his relefe till a certaine time. As if the Tenant hold of his Lord by a rose. or by a bushell of roses, to pay at the feast of S. Johan Baptist. If such a tenant dye in Winter, then the Lord may not distraine for his relefe, &c. untill the time that the roses by the course of the yeare may have their growings, &c. Et sic de similibus.

Also if any peradventure will aske why a man may hold of his Lord by Fealty only for all manner of services, insomuch, that when the tenant shall make his fealty he shall sweare to his Lord that he shall do all services due, and when he hath made fealty in such case there is no other service due: To this it may be said, that where the tenant holdeth his land of his Lord, it behoveth that he ought to do to his

Lord

Lord some manner of ſervice, for if the Tenant nor his heires ought to do no manner of ſervice to his Lord, nor to his heire, then by long time continued it ſhould be out of remembrance of whom the land was holden of the Lord or of his heire, or not, and then more oft and more ſooner will men ſay, that the Land is not holden of the Lord nor of his heires, than otherwiſe: and upon this the Lord ſhall loſe his Eſcheate of his land, or peradventure other forfeiture or profit that he might have of the land: So it is reaſon that the Lord and his heires have ſome ſervice done unto him, for a proofe, and a witneſſe that the land is holden of them, and becauſe fealty is incident to all manner tenures, except tenure in Frankalmoigne, as ſhall be ſaid in Frankalmoigne: & becauſe that the Lord will not at the beginning of the tenure have any other ſervices but fealty, it is reaſon that a man may hold of his Lord only by Fealty, and when he hath made his Fealty he hath done all his ſervice.

Alſo if a man let to another for terme of life certaine lands or tenements, without ſpeaking of any thing to yeeld to the Leſſor, yet he ſhall do the Leſſor Fealty, for that he holdeth of him. And if a Leaſe be made to a man for terme of yeares, it is ſaid the Leſſee ſhall do to the Leſſor Fealty, for that he holdeth of him. And this is proved well by the words in a writ of waſt, when the Leſſor hath cauſe to bring a Writ of waſte againſt him. the which writ ſhall ſay, that the Leſſee holdeth the Tenements of the Leſſor for terme of years: ſo that writ proveth a tenure between thē, &c But he that is tenāt at will after

the course of the common Law, shall not make Fealty, because he hath no manner of sure estate. But otherwise it is of tenant after the custome of the Mannor because that he is bound to do Fealty to his Lord for two causes: One is because of custome, the other is, because that he taketh his estate in such forme to do Fealty.

Frankalmoigne.

TEnant in Frankalmoigne is, where an Abbot or Prior or another man of Religion, or of holy Church, holdeth of his Lord in Frankalmoigne: that is to say in Latine, in liberam Elemosynam, that is to say, in free almes. And such tenure began first in old time when a man in old time was seised of lands or tenements in his demesne as of Fee, and of the same land infeoffed an Abbot and his Convent, or Prior & his Convent, to have and to hold to them and their successors in pure and perpetuall almes, or in Frankalmoigne, or by such words, to hold of the Grantor, or of the Lessor and his heires in free almes: In such case the tenements were holden in Frankalmoigne. And in the same manner it is, where the Lands or Tenements were granted in old time to a Deane and Chapter, and to their successours, or to a Parson of a Church, and to his successours, or to any other man of holy Church, and to his successours in free almes if he had capacity to take such grants or feoffements, &c. And such as hold in free almes, be bound of right afore God to do Orisons,

ſons, Prayers, and Maſſes, and other divine ſervices for the ſoules of the grantors or feoffors, or for the ſoules of their heires (which be dead) and for the proſperity and good life of them that be alive.

And for this they do at no time no manner of Fealty unto their Lords, for that ſuch divine ſervice is better for them before God, than any doing of Fealty. And alſo theſe words, Free almes, or Frankalmoigne, exclude the Lord to have any worldly or temporall ſervice, but only to have divine and ſpirituall ſervice to be done for him, &c. And if ſuch that hold their tenements in Free almes, or Frankalmoigne will not, or faile to do ſuch Divine Service as is ſaid, the Lord may not diſtraine them for the ſervices undone, &c. becauſe it is not ſet in certaine, what ſervice they ought to do: but the Lord may of them complaine to their Ordinary, praying him that he will ſet punithment and correction of that: And alſo to provide and ſee that ſuch negligence be no more done: And the Ordinary of right ought to do that, &c.

But where an Abbot or a Prior holdeth of his Lord by certaine divine ſervice in certaine to be done, as for to ſing a Maſſe every friday in the week, for the ſoules, &c. or every yeare at ſuch a day to ſing Placebo and Dirige, &c. or to find a Chaplaine to ſing Maſſe, &c. or to diſtribute in almes to a hundred poore men, an hundred pence at ſuch a day: in ſuch caſe, if ſuch divine ſervice be not done, the Lord may diſtraine, &c. for that this divine ſervice is in certaine by their tenure what the Abbot or the Prior ought to do. And

in such case the Lord shall have Fealty, &c. as it seemeth.

And such tenure is not said tenure in Free almes but it is said tenure by divine service, for in tenure in free almes, or Frankalmoigne, no mention is made of any manner certain service, for none may hold in free almes or frankalmoign if there be expressed any manner service that he ought to do.

And if it be demanded, if the Tenant in frankmarriage shall do Fealty to the Donor or to his heires before the fourth degree be passed &c It seemeth that yea, for he is not like as to this intent to a tenant in free almes or frankalmoigne, for the tenant in free almes shall do (because of his tenure) divine service for the Lord as it is aforesaid, and that he is charged to do by the law of holy Church, and for that he is excused and discharged of Fealty. But tenant in Frankmarriage doth not by his tenure such service.

And if he do not to his Lord Fealty, then he doth not to his Lord any manner of service neither spirituall nor temporall which should be an inconvenience and against reason, that a man should have estate of inheritance of another, and yet the Lord shall have no manner of service of him as it seemeth, and so it seemeth that he shall do Fealty to his Lord until the fourth degree be past, &c. And when he hath done Fealty, he hath done all his service. And if an Abbot hold of his Lord in free almes, and the Abbot and his Covent under their common seale alien the same land to a secular man in fee simple, in this

this case the secular man shall do Fealty to the Lord, for that he may not hold of his Lord in free almes: For if the Lord ought not to hold of him Fealty, then he shall have of him no manner of service which should be an inconvenience, where he is Lord, and the tenements are holden of him.

Also if a man grant at this day to an Abbot or to a Prior, Lands or Tenements in free almes, or Frankalmoigne, these words free almes, or Frankalmoigne be void, for that it is ordained by the Statute which is called, Quia emptores terrarum, which Statute was made Anno 18. Regis E. primi, That no man may alien or grant lands or tenements in Fee simple to hold of himselfe, so that if a man be seised of certaine lands or tenements which he holdeth of his Lord by Knights service, and at this day he granteth the same land to an Abbot, &c. in free almes, or Frankalmoigne, the Abbot shall hold immediately the same Tenements by Knights service of the Lord of his Grantor, because of the same Statute: so that no man may hold in free almes, or in Frankalmoigne, but if it be by title of prescription, or by force of a grant made to some of his predecessors before the same Statute: But the King may give lands or Tenements in Fee simple to hold in free almes or Frankalmoigne, or by other service, for he is out of the case of the Statute. And note well, that no man may hold Lands or Tenements in free almes, but of the grantor or his heires, and that for the privity of the gift: and therefore it is said, that if there be Lord, Mesne, and

Tenant,

tenant, and the tenant is an Abbot that holdeth of his Meſne in Frankalmoigne, if the Meſne die without heire, then the meſnalty ſhall come by Eſcheat to the ſaid Lord aboue, and the Abbot then ſhall hold of him immediately only by fealty, and ſhall do him fealty, for that he may not hold of him in Frankalmoigne &c

And note well, where that ſuch a man of religion holdeth his lands of his Lord in free almes, &c. his Lord is bound by the Law to acquit him of every manner of ſervice that any Lord aboue him will demand or aſke of the ſame tenants. And if he acquit him not, but ſuffer him to be diſtrained &c. then he ſhall haue againſt his Lord a Writ of Meſne, and recouer his damages and coſts of his ſuit.

Homage auncestrell.

TEnure by Homage Auncestrell is, where a tenant holdeth his land of his Lord by homage, and the ſame tenant and his Anceſters whoſe heire he is, haue held the ſame land of the ſaid Lord, and of his Anceſters, whoſe heire the Lord is, from time out of mind by homage, and haue done homage unto him: which is called Homage auncestrell, becauſe of the continuance which hath been by title of preſcription in the tenancy, in the bloud of the tenant, and alſo in the Lordſhip in the bloud of the Lord. And ſuch ſervice by homage auncestrell draweth to it warranty: if the Lord that is alive hath received homage of ſuch a tenant, he ought to warrant his tenant when he is impleaded of the lands holden

holden of him by homage anceſtrell. And all ſuch ſervice by homage anceſtrell draweth to it acquittance, that is to ſay, the Lord ought to acquit his Tenant againſt all other Lords above him of every manner of ſervice. And it is ſaid, that if ſuch tenant be impleaded by a Præcipe quod reddat, &c. and he voucheth his Lord to warranty, which commeth in by proceſs, and asketh the Tenant what he hath to bind him to warranty, and he ſheweth how he and his Anceſtors, whoſe heire he is, have holden the land of the Vouchee and of his Anceſtors, whoſe heire he is, by homage from time out of mind: if the Lord which is vouched received no homage of the tenant, nor of any of his Anceſtors the Lord then, if he will, may diſclaime in the Lordſhip, and ſo put out his Tenant of his warranty. But if the Lord which is vouched hath received homage of the Tenant, or of any of his Anceſtors, then may he not diſclaime, but he is bound by the Law to warrant the tenant, and then if the tenant leſe the land in default of the vouchee, he ſhall recover in value againſt the vouchee of the Lands or Tenements that the Vouchee had at the time of the voucher, or any time after.

And it is to wit, that in every caſe where the Lord may diſclaime in his Lordſhip by the Law, in Court of Record, and of that will diſclaime, his ſeigniory is extinct, and the tenant ſhall hold of the Lord next above his Lord which ſo diſclaimeth. But if an Abbot or Prior be vouched by force of Homage Anceſtrell, &c. though he have never taken Homage, &c. yet he cannot diſ-

claime

claime in this caſe, nor in none other caſe, for they cannot divest that thing in Fee, which hath been vested in their house, Pasch. 10. E. 4.

Also if a man that holdeth his land by homage anceſtrell alieneth his land to another in fee, the alienee shall do homage to his Lord: but he holdeth not of his Lord by Homage anceſtrell, for that the tenancy was not continued in the blood of his anceſtors of the alienee nor the alienee shall never have the warranty of his land of the Lord, for that the continuance of the tenancy in the tenant and in his blood by the alienation is discontinued. And so see, that if the Tenant that holdeth his Land by Homage anceſtrell of the Lord, and such a tenant alieneth in fee, though that he take eſtate of the alienee againe in fee, he holdeth the land by Homage, but not by homage anceſtrell.

Also it is said, that if a man hold his Land of his Lord by homage and fealty, and he hath made homage and fealty to his Lord, and the Lord hath issue a son and dieth, and the Lordship descendeth to his son: In this case the tenant which did homage to the father, shall not do homage to his son, for that when a tenant hath made once homage to his Lord, he is excused for terme of his life to make homage to another heire of the Lord. But yet he shall do fealty to the son and heire of his Lord, though that he made fealty to his father.

Also if the Lord after the homage to him made by his Tenant, grant the service of his Tenant by deed unto another in Fee, and the Tenant attorneth &c. the tenant shall not be compelled to

do

do homage, but he ſhall do fealty, though he did fealty before to the Grantor, for Fealty is incident to every attornement, when the Lordſhip is granted. But if a man be ſeiſed of a Mannor, and another man holdeth his land of him as of the Mannor aforeſaid by homage, the which hath done homage to his Lord which is ſeiſed of the Mannor, if after that a ſtranger bring a Præcipe quod reddat againſt the Lord of the Mannor, and recovereth the Mannor againſt him, and ſueth execution, &c. in this caſe the tenant ſhall once againe do homage to him that recovereth the Manor, for that the eſtate of him that receiued homage before is defeated by the recovery: And it ſhall not lye in the mouth of the tenant to falſifie or defeat the recovery which was againſt his Lord. And ſo ſee the diuerſity in this caſe, where a man commeth to his Lordſhip by recovery, and where it commeth by deſcent, or grant of the Seigniory.

And if a Tenant which ought by his tenure to do homage to his Lord, come to his Lord, and ſay to him, Sir I owe to do unto you homage for the tenements that I hold of you, and I am ready to do you homage for the ſame tenements, for the which I pray you that you will now receiue it, and if the Lord then refuſe to receiue it, then after ſuch refuſall the Lord may not diſtraine the tenant for the homage, before that the Lord require the tenant to do homage, and the tenant refuſe to do it.

Alſo a man may hold his land by homage anceſtrell, and by Eſcuage, or by other Knights ſeruice, as well as he might hold his land by homage anceſtrell in ſocage.

Grand

Grand Serjeanty.

TEnant by Grand Serjeanty is, where a man holdeth his lands or tenements of our soveraigne Lord the King, by the service which he ought to do in his own proper person, as to beare the Kings Banner, or his Speare, or to lead his Host, or to be his Marshall, or to beare his sword before him at his Coronation, or to be his Sewer at his Coronation, or his Carver, or Butler, or to be one of his Chamberlaines of his receit of his Exchequer, or to do such services, &c. And the cause wherefore such service is called Grand Serjeanty is, for that it is more honourable, and worshipfull, and digne, than is the service of the tenure by Escuage, for he that holdeth by Escuage, is not limited by his tenure to do any more especiall service, than any other that holdeth by Escuage ought to do. But he that holdeth by Grand Serjeanty, ought to do some especiall service to the King, that he that holdeth by Escuage ought not to do.

Also if the tenant which holdeth by Escuage die, his heire being of full age if he held by a Knights fee, the heire shall pay but an C.s. for his reliefe, as it is ordained by the statute of Magna Charta ca. 2. But he that holdeth of the King by Grand Serjeanty, and dieth, his heire being of full age shall pay unto the King for his reliefe the value of his lands or tenements by the yeare, besides the charges and reprises which he holdeth of the King by Grand Serjeanty.

And

And it is to wit, that Serjeantia in Latine is servitium, and so Magna serjeantia, is Magnum servitium, that is to say, a great service.

Also those which hold by Escuage ought to do their service out of the Realme, but they that hold by Grand Serjeanty for the most part ought to do their service within the Realme.

And it is said, that in the marches of Scotland some hold of the King by Cornage, that is to say, to blow an horne for to warne the men of the countrey, &c. when they heare that the Scots or other enemies will come to enter into England, &c. which service is Grand Serjeanty, &c. But if any tenant hold of any other Lord than of the King by such service of Cornage, that is not Grand Serjeanty, but it is Knights service, and draweth to it ward, marriage, and reliefe, for none may hold by Grand Serjeanty, but of the King only.

Also a man may see in the 11. yeare of Henry 4. fol. 27. that Cokein then being chiefe Baron of the Exchequer came into the common Pleas, bringing with him a copy of a Record in these words, Talis tenet tantam terram de domino Rege per Serjeantiam, ad inveniendum unum hominem ad guerram intra quatuor maria, &c. that is to say, Such a man holdeth so much land of our soveraign Lord the King by Serjeanty, to find one man appointed for the war within the foure seas, and he demanded whether it was Grand Serjeanty, or Petty Serjeanty: And Hank. then said, that it was Grand Serjeanty, for that it was service to be done by the body of a man, and if that he may not find a man to do

service

ſervice for him, he muſt do it himſelfe: to whom the other Juſtices aſſented. Cokaine then ſaid, the tenant in this caſe ſhall pay reliefe to the value of the land by yeare, to the which was no anſwer. And note, that all they that hold of the King by Grand Serjeanty, hold of the King by Knights ſervice, and the King of that ſhall have ward, marriage and reliefe, but the King ſhall not have of them Eſcuage, if they hold not by Eſcuage.

Petty Serjeanty.

TEnant by Petty Serjeanty is, where a man holdeth his land of our Soveraigne Lord the King to yeeld unto him yearely a Bow, a Sword, a Dagger, or a Knife, or a Speare, or a paire of Gloves of maile, or a paire of Spurs gilt, or an Arrow, or divers Arrows, or to yeeld ſuch other ſmall things touching the war, and ſuch ſervice is but Socage in effect for that that the Tenant by his tenure ought not to go, nor to do any thing in his own proper perſon touching the war, but to yeeld and pay yearely certaine things unto the King, as a man ought to pay a rent.

And note, that no man holdeth Land by Grand Serjeanty, nor by by Petty Serjeanty, but of the King,

Burgage.

TEnure in Burgage is, where an ancient Borough is, of the which the King is Lord, and they that have tenements within the Borough

rough hold of the King their tenements, that e-very tenant for his tenement ought to pay to the King a certaine rent by yeare, &c. And such tenure is but tenure in Socage. And the same manner is where another Lord spirituall or temporall is Lord of such a Burrough, & the tenants of the tenements in such a Burrough hold of their Lord to pay each of them yearely an annuall rent: and it is called tenure in Burgage for that the tenements within the Burrough be holden of the Lord of the Burrough by certaine rent. &c. And it is to wit, that the ancient Towns called Burroughs, be the most ancient and eldest Towns that be within England, for the Townes that now be Cities or Counties, in old time were Burroughs, and called Burroughs, for of such old Towns, called Burroughs come the Burgesses of the Parliament, to the Parliament, when the King hath summoned his Parliament.

Also for the greater part, such Burroughs have divers customes and usages which be not had in other Towns; for some Burroughs have such a custome, that if a man have issue many sons and dyeth, the youngest son shall inherit all the tenements which were his fathers within the same Burrough as he re unto his father, by force of the custome, the which is called Burrough English.

Also in some Burroughs by the custome the wife shall have for her dower all the tenements which were her husbands.

Also in some Burrough by the custome, a man may devise by his testament his lands

and tenements which he hath in fee simple within the same Burrough at the time of his death, and by force of such device, he to whom such device is made after the death of the deviſor, may enter into the tenements to him deviſed, to have and to hold to him after the forme and effect of the device, without any livery of seisin thereof to be made to him.

Also, though a man may not grant nor give his tenements to his wife during the coverture, for that that his wife and he be but one person in the Law, yet by such custome he may deviſe by his testament his tenements to his wife, to have and to hold to her in Fee simple, or in Fee taile, or for terme of life, or yeares, for that such device taketh no effect, but after the death of the deviſor. And if a man at divers times make divers Testaments, and divers deviſes &c. yet the last deviſe and will made by him, shall stand and abide.

Also by such custome a man may deviſe by his Testament, that his executors may alien and sell the tenements that he hath in Fee simple for a certaine sum, to distribute for his almes: In this case though the deviſor die seised of the Tenements, and the tenements descend unto his heire, yet the executors after the death of the Testator may sell the tenements so deviſed, and put out the heire, and thereof make a feoffment, alienation, and estate by deed, or without deed, to them to whom the sale is made unto.

And so may ye see a case, where a man may make a lawfull estate, and yet he hath nought in the tenements at the time of the estate made:

And

And the cauſe is for that, that the cuſtome and uſage is ſuch, Quia conſuetudo ex certa cauſa rationabili uſitata, probat communem legem, For a cuſtome uſed upon a certaine reaſonable cauſe, proveth the common law.

And note well, no cuſtome is to be allowed, but ſuch cuſtome as hath been uſed by title of preſcription, that is, to ſay, from time whereof is no mind. But divers opinions have been of time out of mind, and of title of preſcription, which is all one in the Law; for ſome men have ſaid, that the time of mind ſhould be ſaid for time of limitation in a writ of right, that is to ſay, from the time of King Richard the firſt after the Conqueſt, as is given by the ſtatute of Weſtminſter the firſt, for that a writ of right is the moſt higheſt Writ in his nature that may be. And in ſuch a writ a man may recover his right of the poſſeſſion of his Anceſters, of the moſt ancient time that any man may by any Writ by the Law. And inſomuch that it is given by the ſaid Eſtatute, that in ſuch a writ none ſhall be heard to aske of the ſeiſin of his Anceſtors of more longer time than of the time of King Richard aforeſaid; therefore this is proved, that continuance of poſſeſſion, or other cuſtomes and uſages uſed after the ſame time is title of preſcription, and this is certaine. And others have ſaid, that well and truth it is, that ſeiſin and continuance after the limitation, &c. is a title of preſcription, as is aforeſaid, and by the cauſe aforeſaid. But they have ſaid that there is alſo another title of preſcription that was at the common Law, before any Eſtatute of limitation of Writs, &c. And

that it was where a Custome or usage, or other thing hath been used, for time whereof mind of man runneth not to the contrary: And they have said that this is proved by the pleading: where a man will plead a title of prescription of custome &c. he shall say that such custome hath been used from time whereof the memory of men runneth not to the contrary, that is as much to say when such a matter is pleaded, that no man then alive hath heard any proofe to the contrary, nor hath no knowledge to the contrary, and insomuch that such title of prescription was at the Common Law, and not put out by an Estatute Ergo it abideth as it was at the Common Law, and the sooner insomuch that the said limitation of a writ of Right, &c. is of so long time passed. Ideo quære de hoc. And many other customes and usages have such ancient Burroughs

Also every Burrough is a towne, but not the contrary. More shall be said of customes in the tenure.

Villeinage.

TEnure in villeinage is most properly when a Villeine holdeth of his Lord (to whom he is Villeine) certaine lands and tenements after the custome of the Mannor or else at the will of his Lord and to do his Lord villeine service, as to beare, bring and carry out the dung and filth of the Lord unto the Land of the Lord, there to lay it cast it, and spread it abroad upon the land, and to do such other manner of service. And

some

some free tenants hold their tenements after the customs of certaine Mannors by such service, and their tenure is called tenure in villeinage, and yet they be no villeines, for no Land holden by Villeinage, or villeine Lands, or any custome arising of the land, shall ever have a free man villeine. But a villeine may make a free land to be villeine land unto his Lord As if a villeine purchase land in fee simple, or in fee taile, the Lord of the villeine may enter into the land, and put out the villeine and his heires for ever, and after the Lord (if he will) may let the same land to the villeine, to hold in villeinage.

Also if a Feoffment be made to a certaine person or persons in fee to the use of a villeine, or if a villeine with other persons be enfeoffed to the use of a Villeine, what estate soever the villein hath in the use in fee taile, for terme of life, or yeares, the Lord of the Villeine may enter in all those lands and tenements, likewise as if the Villeine had been alone seised of the demesne: And that is by the statute of Anno 19. Hen. 7. ca. 15. But if a free man will take any lands or tenements of his Lord by such Villeine service, that is to say to pay a fine to his Lord for his marriage or for the marriage of his son, or his daughter, then shall he pay such a fine for the marriage &c. for that it is the folly of such a free man, to take in such forme lands or Tenements to hold of his Lord by such bondage, yet that maketh not the free man villeine

Also, every villeine either he is villeine by prescription, that is to say, he and his ancestors have been villeines time out of mind, or he is

villeine by his own confession in Court of Record. But if a free man have divers issues, and after confesseth himselfe to be villeine to another in Court of Record yet his issues which he hath before the confession be free but the issues which he shall have after the confession, &c. shall be Villeines.

Also, if a villeine purchase lands and alieneth the same lands to another before his Lord enter, then the Lord may not enter, for it shall be judged his own folly that he entred not when the land was in the Villeines hands. And so it is of his other goods for if the Villeine buy and sell, or give goods to another before that the Lord seise the goods, then the Lord may not seise them. But if the Lord before any such sale or gift commeth within the house of the villeine where such goods be, and there openly among the neighbours claime the same goods to be his, and so seise parcell of the same in name of seisin of all his goods, &c. this is said a good seisin in the Law. And the occupation that the villeine hath after such claime in the goods, shall be taken in the Law, in the right of the Lord. But if the King have any villeine that purchaseth lands, and alieneth before that the King enter, yet the King may enter in the land in whose hands soever the land commeth: or if the villeine buy or sell divers goods before that the King seise the goods, yet the King may seise them in whose hands soever they be, quia nullum tempus occurrit Regi, for no time runneth against the King.

Also if a man let Land to another for terme of life, saving the reversion to him, and a villeine purcha-

purchaseth of the Lessor the reversion, in this case it seemeth that the Lord of the Villeine may incontinent come to the Land, and claime the same reversion as Lord of the same Villeine, and by this claime, the reversion is incontinent in him. for in any other forme he may not come to the reversion, for he may not enter upon the tenant for terme of life. And if he ought to attend till after the death of the tenant for terme of life, then happily he might come too late, for peradventure the Villeine will grant or alien to another in the life of the tenant for terme of life. In the same manner it is where a villeine purchaseth the Advowson of a Church full of an incumbent, that the Lord of the Villeine may come to the said Church and claime the Advowson, and by this claime the Advowson is in him: for if he abide till after the death of the incumbent, and then present his Clarke to the said Church; then in the meane time the villeine might alien the Advowson, &c. and so put out the Lord from his presentation.

Also there is a villeine regardant, and a villeine in grosse. Villeine regardant is, as if a man be seised of a Mannor, to which a villeine is regardant, and he that is seised of the said Mannor, or they whose estate he hath in the same Mannor have been seised of the said villeine and of his Ancestors as villeines regardant to the Mannor from time out of mind. And villeine in grosse is, where a man is seised of a Mannor, to the which a villeine is regardant, and granteth the same villeine by his deed unto another, then he is Villeine in grosse, and not regardant.

Also if a man and his Ancestors whose heire he is have been seised of a Villeine, and of his Ancestors, as villeines in grosse time out of mind, such be Villeines in grosse And note well, that of such things which may not be granted nor alienedwithout Deed or Fine, a man that will have such things by prescription may not otherwise prescribe but in him and his Ancestors whose heire he is and not by these words, in him and whose estate he hath, for that that he may not have their estate without deed or writting. the which behoveth to be shewed to the Court, if he will have any advantage of this: and because that the grant and the alienation of a Villeine lieth not without deed or other writting. a man may not prescribe in a Villeine in grosse without shewing of writting. but in himselfe that claimeth the Villeine, and in his Ancestors whose heire he is. But of those things which be regardant or appendant to a Mannor, or to other Lands or Tenements. a man may prescribe that he and they whose estate he hath were seised of the Mannor, or such Lands or Tenements, as regardants or appendants to the Mannor, or to such Lands or Tenements &c. from time out of mind: and the cause is for this, that such a Mannor, Lands and Tenements, may passe by Alienation without deed, &c. And it is to wit, that nothing is named regardant to a Mannor but a Villeine. But certaine other things, as Advowsons and Common of pasture &c. be named appendants to the Mannor, or to other Lands and Tenements.

Also

Alſo if a man in Court of Record knowledge himſelfe to be villeine that never was villeine before, ſuch a one is villeine in groſſe.

Alſo a man that is villeine is called a Villeine, and a woman that is villeine is called a Nieke. And a man that is outlawed is called an Outlaw, and a woman that is outlawed is called a Waike.

Alſo if a villeine take a free woman to wife, the iſſue between them ſhall be villeine. But if a Nieke take a free man to husband, their iſſue ſhall be free. And that is contrary to the Law Civill, for there is ſaid, That partus ſequitur ventrem.

Alſo no Baſtard may be Villeine but if that he will acknowledge himſelfe to be Villeine in Court of Record, for he is in the Law, quaſi nullius filius, as the ſon of no man.

Alſo every villeine is able and free to ſue all manner of actions againſt every perſon, except againſt his Lord to whom he is villeine: and yet in certaine things he may have againſt his Lord an action, as of appeale for the death of his father or of his other anceſtors whoſe heire he is. Alſo a Nieke which is ravished by her Lord may have Appeale of Rape againſt him.

Alſo if a Villeine be made executor to another, and the Lord of the Villeine was indebted to the Teſtator in a certaine ſum of money, the which is not payed: In this caſe the villeine as Executor to the Teſtator, ſhall have an action of debt againſt his Lord, becauſe he ſhall not recover the debt to his proper uſe, but to the uſe of the teſtator.

Alſo

Also the Lord may not take out of the possession of such a villeine, that is Executor, the deads goods, and if he do, the Villeine as Executor shall have an action of Trespasse against his Lord for the same goods so taken, and recover damages to the use of the Testator. But in all these cases it behoveth the Lord (which is defendant in such actions) to make protestation that the plaintiffe is his villeine, or else the villeine shall be infranchised, though the matter be found for the Lord against the villeine, as it is said.

Also, if a villeine sue an action of Trespasse, or other action against his Lord in one shire, and the Lord saith, that he shall not be answered, for that he is villeine regardant to his Mannor in another Shire, and the plaintiffe saith, that he is franke and of free estate, and no Villeine, this shall be tried in the Shire where the plaintiffe hath conceived his Action, and not in the Shire where the Mannor is, and this is in favour of liberty, and it is adjudged Mich. 40. Edward the third. And for this cause was made a statute in the ninth yeare of Richard the second, the tenour of which ensueth in such forme.

Also for that, where many Villeines and Nieces, as well of great Lords as of other folke spirituall and temporall, flie and go into Cities and places franchised, as the City of London, and other like places, and faine divers suits against their Lords, because they would make themselves to be infranchised, it is accorded and assented that the Lords, nor none other shall be forebarred of their villeines, because of

their

their answer in the Law. By force of which statute, if any villeine will sue any manner of action to his own use in any Shire where this hard to try, &c. against his Lord, his Lord may chuse to plead that the plaintife is his villeine, or to make protestation that he is his villeine, & to plead another matter in bar, and if they be at issue, and the issue be found for the Lord, then the villeine is villeine as he was before, by force of the same statute: but if the issue be found for the villeine, then is the villeine frank and free, for that the Lord tooke not for his plea, that the villeine was his villeine, but tooke it by protestation.

Also the Lord may not maime his Villeine, for if he maime his Villeine, he shall of that be indicted at the Kings suit. And if he be of that attainted, he shall for that make grievous Fine and ransome to the King. But it seemeth that the villeine shall not have by the Law any appeale of Maime against his Lord, for in appeale of Maime a man shall not recover but his damages. And if the Villeine in that case recover damages against his Lord and hath thereof execution the Lord may take that that the villeine hath in execution from the Villeine, and so the recovery standeth void.

Also if the Villeine be demandant in an action reall, or plaintife, in an action personall against his Lord, if the Lord will plead in disability of his person, he may not make plaine defence, but he shall defend but the wrong and the force, and demand Judgement if he shall be answered, and shew his matter by and by how he

is

is Villeine, and demand Judgement if he shall be answered.

Also, for manner of men there be against whom if they sue actions, &c Judgement may be asked if they shall be answered One is where the villeine sueth an action, &c. against his Lord, as in case aforesaid The second is, where a man is outlawed upon an Action of debt or trespasse, or upon any other action or indictment, the Tenant, or the Defendant may shew all the matter of the Record and the outlawry, and demand judgement if he shall be answered, because that he is out of the Law to sue an action during the time that he is outlawed. The third is, where an alien borne out of the allegeance of our Soveraigne Lord the King, if such alien sue an Action reall or personall, the tenant or defendant may say, that he was borne out of the Kings allegeance, and aske judgement if he shall be answered. The fourth is, where a man by judgement given against him upon a writ of Præmunire facias, &c is out of the Kings protection, if he sue any action, and the tenant or defendant shew all the Record against him, he may aske judgement if he shall be answered, for the Law & the Kings writs be the things by which a man is protected and holden, and so during the time that a man in such case is out of the Kings protection he is out of help and protection by the Kings Law, or by the Kings writ The fifth is, where a man is entred and professed into Religion if such a person sue an action, the tenant or defendant may shew that such a one is entered into Religion in such a place, into the Order of Saint Benner,

and

and is there a Monke professed, or in the Order of Friers, Minors, or Preachers, and is there a Frier professed, and so of other orders of Religion, &c. and aske judgement if he shall be answered, and the cause is this, that when a man entreth into Religion, and is professed, he is dead in the Law, and his son or next cosin incontinent shall inherit him, as well as though he were dead indeed, and when he entreth into Religion, he may make his Testament and his executors, and they may have an action of debt due to him before his entry into Religion, or any other action that executors may have, if he were dead indeed. And if he make no executors when he entreth into Religion, then the Ordinary may commit the Administration of his goods to other, as if he were dead indeed. The sixth is, where a man is accursed by the law of holy Church, and he sueth his action reall or personall, the tenant or defendant may plead that he that sueth is accursed, and of this it behoveth him to shew the Bishops Letters under his seale witnessing the accursing, and aske judgement if he shall be answered &c. but in this case if the demandant or plaintiffe cannot deny it, the writ shall not abate, but the judgement shall be, that the tenant or defendant shall go quite without day, for this, that when the demandant or plaintife hath purchased his letters of absolution, and shewed them to the Court, he may have a resummons or a recattachment upon his originall after the nature of his writ, &c. But in the other cases the writ shall abate, &c. if the matter shewed may not be gainsaid.

Also

Also, if a villeine be made a secular Priest, yet his Lord may seise him as his villeine, and seise his goods, &c. But it seemeth, that if the villeine enter into religion, and is professed, &c. that the Lord may not take him, nor seise him, for that he is dead in the Law. And no more then if a Free man take a Niefe to his wife, the Lord may not take nor seise the wife of the husband: But his remedy is to have an Action against the husband, for that he took his Niefe to wife without his will, and so may the Lord have an action against the Soveraigne of the house that taketh and admitteth his villeine to be professed in the same house without licence and will of his Lord, &c. and shall recover his damages to the value of the villeine: for he that is professed Monke, &c. shall be a Monke, and as a Monke shall be taken for terme of his life naturall except he be dereigned by the Law of the holy Church, and he is holden by his religion to keep his cloyster. and if the Lord may take him out of the house, then he should not live as a dead person, nor alter his religion, which should be inconvenient, &c. For if there be Warden in Chivalry of body and Lands of a child within age, if the child when he comes to the age of fourteen years enter into Religion and is professed, the Warden hath none other remedy, as to the ward of the body but a Writ of Ravishment of ward against the Soveraigne of the house. And if any being of full age, that is cosin and heire unto the child, enter into the land the Warden hath no remedy as to the ward of the land, because that the entry of the heire of the child is lawfull in such case.

Also

Also in many other cases the Lord may make Manumission, and infranchising to his villeine. Manumission is properly when the Lord maketh his deed to his villeine to infranchise him by this word Manumittere, which is as much as say, as extra manum, & extra potestatem alterius ponere, as to put him out of the hands and the power of another. And for this that by such a deed the villeine is put out of the hand and power of his Lord, it is called Manumission. And so every manner of infranchising made to a villeine, may be said a Manumission. Also if the Lord make to the villeine an Obligation for a certaine sum of mony, or grant unto him by his deed an annuity, or let him by his deed, lands or tenements for terme of yeares, the villeine is infranchised. And if the Lord make a Feoffment to his villeine of any Lands or Tenements by deed, or without deed, in Fee simple, or fee taile, or for terme of yeares, and delivereth unto him the seisin, this is an infranchising: But if the Lord make to him a Lease of Lands and Tenements to hold at the will of the Lord, by deed or without deed, this is no infranchising, for that he hath no manner of certainty nor surety of his estate, but that the Lord may put him out when he will. Also, if a Lord sue against his villeine a Præcipe quod reddat, if he recover, or be nonsuit after apparance, this is manumission, for this that he may lawfully enter into the land without such suit. In the same manner it is if he sue against his Villeine an action of Debt or of Account, or of Covenant, or of Trespasse, or such other, this is an Infranchising, &c. For this that he may imprison his

his villeine, and take his goods without such suit. But if the Lord sue his villeine by Appeale of Felony, this is no infranchising to the villeine, though the matter of the appeale is found against his Lord, because that the Lord may not have the villeine hanged without such suit. But if the villeine were not indicted of the same fellony before the appeale sued against him, and is acquitted of the felony, so that he recover damages against the Lord for the false appeale: then in this case the villeine is infranchised, because of the judgement of damages that was given to him against his Lord. And more cases and matters there be by the which a villeine may be enfranchised against his Lord, Sed de illis quære. Also if a Lord of a Mannor will prescribe that it hath been accustomed within his Mannor, time out of mind, that every tenant within the same Mannor that marrieth his daughter to any man without licence of the Lord of the Mannor shall make fine to the Lord for the time being, this prescription is void, for none ought to make such fines but only villeins, for every free man may freely marry his daughter to whom it pleaseth him and his daughter. And because that this prescription is against reason such prescription is void; but in the shire of Kent of lands holden in Gavelkind whereby the custome used time out of mind, the children males ought evenly to inherit, this custome is allowable, for this that it is with some reason, because that every son is as great a Gentleman as the elder son, and because of that, more great honour and valour shall grow, than if he had nothing

thing by his Anceſtors, where peradventure he might not ſo grow, &c.

Alſo, where by the cuſtome called Burrough English, in ſome Burrough the youngeſt ſon ſhall inherit all the tenements, &c. this cuſtome alſo ſtandeth with reaſon, becauſe that the younger ſon if he lacke father and mother, becauſe of his young age may leaſt of all his brethren help himſelfe, &c. But if a man will preſcribe that if any cattell were upon the demeanes of the Mannor there doing damage, that the Lord of the Mannor for the time being hath uſed to diſtraine them, and the diſtreſſe to retaine till fine were made to him for the damages at his will, this preſcription is void, becauſe it is againſt reaſon, that if wrong be done any man, that he thereof ſhould be his owne Judge, for by ſuch way if he had damages but to the value of an halfe penny, he might aſſeſſe and have therefore an C.l. which ſhould be againſt all reaſon. And ſo ſuch preſcription, or any other preſcription uſed, if it be againſt all reaſon, this ought not, nor will not be allowed before Juſtices, Quia malus uſus abolendus eſt.

Rents.

THree manner of Rents there be, that is to ſay, Rent ſervice, Rent charge, and Rent ſecu. Rent ſervice is where a man holdeth his land of his Lord by fealty, and certaine rent, or by other ſervice, and certaine rent, or by homage, fealty, and certaine rent, and if rent ſervice at any day that it ought to be payed, be behind,

the Lord may distraine for that of common right. And if a man now will give lands or tenements to another in the taile, yeelding to him certaine rent by the yeare, he of common right may distraine for the rent behind, though that such gift was made without deed, because that such rent is rent service: But in such case where a man upon such a gift or lease will reserve to him rent service, it behoveth that the reversion of the lands and tenements be in the donor, or in the lessor: for if a man will make a feoffment in fee, or will give Lands in the taile, the remainder over in fee simple, without a deed reserving to him certaine rent, such reserving is void, because that no reversion is in the Donor, and such a tenant holdeth his land immediately of the Lord of whom his Donor held. And this is by force of the statute of Westm. the 3. cap. 1. Quia emptores terrarum. For before the same statute, if one made a feoffment in fee simple by deed, or without deed, yeelding to him, or to his heires certaine rent, this was rent service, and for this he might distraine of common right: And if he made no reservation of any rent, nor of any service, yet the feoffee held of the feoffor by such service, as the feoffor held over of his Lord next above. But if a man by deed indented at this day, make such a gift in the taile, the remainder over in Fee, &c. or feoffment in fee and by the same indenture reserveth to him and to his heires a certaine rent, and that if the rent be behind, that it shall be lawfull to him and to his heires to distraine, &c. such rent is rent charge, because such lands and tenements be charged of such distresse by force of

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the writing only and not of common right. And if such a man in such a deed indented, reserve to him and to his heires certaine rent, without any such clause set or put in the deed, that he may distraine, &c. that such rent is rent secke, because that he cannot distraine to have the rent, if it be denied by the same distresse, and if he were never seised in this case of the rent, he is without remedy, as it shall be said hereafter.

Also if a man seised of certaine land, grant by his deed Poll, or by indenture, a yearely rent issuing out of the same Land to another in fee simple, or in fee taile, or for terme of life, &c. with clause of distresse, &c then that is rent charge, and if it be without clause of distresse then it is rent secke. And note well that rent secke, idem est quod redditus siccus, because that no distresse is incident to it.

Also if a man grant by his deed rent charge to another, and the rent is behind, the grantee may chuse if he will sue a writ of annuity of it against the grantor, or distraine for the rent behind, and the distresse to withold till he be of that paid: But he may not do and have both together, for if he take a writ of annuity, then the land is discharged, and if he sue not a writ of annuity but distraine for the arrerages, and the tenant sueth a Replegiare, &c. and the grantee aboweth the taking of the distresse in the Land &c. in Court of Record, then is the land charged, and the person of the grantor discharged of an action of Annuity.

Also, if a man will that another shall have a rent charge issuing out of his lands, but he will

not that his person shall be charged in any manner by a writ of Annuity then he may have such clause in the end of his deed. Provisō semper quod præsens scriptum, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam per breve de Annuali redditu; Sed tantummodo ad onerandum terra & tenementa prædicta, de Annuali redditu prædict' and then is the land charged, and the person of the grantor discharged.

Also, if a man make such a deed in such manner, that if A of B be not yearly payed at the Feast of Christmas for terme of life, twenty shillings of lawfull money, that then it shall be lawfull to the said A of B to distraine for it in the Mannor of F &c. this is a good rent charge, because that the Mannor is charged of the rent by way of distresse and yet the person himselfe that made such a deed is discharged in this case of an action of annuity, because that he granted not by his deed any annuity to the said A of B but granted only that he may distraine for his annuity.

Also if a man have a rent charge to him and to his heires, issuing out of certaine land, if he purchase any parcell of the Land to him and to his heires, all the rent is extinct and annulled, because that rent charge may not in such manner be apportioned: but if a man that hath rent service purchase parcell of the land whereof the rent is, this shall not extinct all, but for the portion, for that rent service in such case may be apportioned, and shall be apportioned after the value of the Land: but if a tenant hold his land by service to

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yeild to his Lord yearly at such a feast an horse, or an hawke, or such thing semblable, if in such case the Lord purchase parcell of the land, the service is gone, because that such service may not be severed nor apportioned. But if a man hold his land of another by homage, fealty, and escuage, and by certaine rent, if Lord purchase parcell of the Land &c in that the rent shall be apportioned, as is aforesaid; but yet in this case the homage & fealty abideth whole to the Lord, for the Lord shall have the homage and fealty of his tenant for the remnant of Lands and tenements holden of him as he had before, &c. for this that such services be not annuall services, and may not be apportioned But the escuage may and shall be apportioned after the quantity and rate of the land.

Also if a man have a rent charge, and his father purchaseth parcell of the tenements charged in the fee and dieth, and that parcell descendeth to his son that hath the rent charge, now this rent charge shall be apportioned after the value of the land, as is aforesaid of rent services, because that such a portion of the Land purchased by the father, commeth not to the son by his own deed, but by descent and course of the Law.

Also if there be Lord and tenant, and the tenant holdeth of his Lord by fealty and certaine rent, and the Lord granteth the rent by his deed to another &c. reserving to him the fealty, and the tenant attourneth to the grantee of the rent, now such rent is rent seeke to the grantee, for this that the tenements be not holden of the grantee of the rent, but be holden of the Lord that

reserved to his fealty And in the same manner it is where a man holdeth his land by homage, fealty and certaine rent, if the Lord grant the rent, saving to him the homage, such rent after such grant is rent secke. But where Lands or Tenements be holden by homage, fealty, and certaine rent, if the Lord will grant the homage of his land by his deed to another, saving to him the remnant of the services and the tenant attourneth to him after the forme of the grant, now in this case the tenant holdeth his land of the grantee: and the Lord that granteth the homage shall not have but the rent as rent seck, and shall never distraine for the rent: for this, that neither homage nor fealty nor escuage, may be said seck, for he that hath, or ought to have of his tenant homage, or fealty, or escuage, may of common right distraine for it if it be behind, for homage, fealty, and escuage be services by which lands and tenements be holden, and be such that in no manner may be taken but as services. But otherwise it is of rent that was once rent service, for this that when it is severed, &c. by the grant of the Lord from other services, it may not be said rent service for this, that it hath not to it fealty which is incident to every manner of rent service and for this it is said rent secke.

Also if a man let Land to another for terme of life, reserving to him certaine rent, if he grant the rent to another, saving to him the reversion of the Land so letten by his deed &c such rent is but rent secke, for this that the grantee hath nothing in the reversion of the land But if he grant the reversion of the Land to another for terme of life,

and

and the tenant attourneth, &c. then hath the grantee the rent as rent service, because he hath the reversion for terme of life. And it is to be understood, that if a man give Lands or Tenements in the taile, reserving to him and to his heires certaine land, or let land for terme of life, reserving certaine rent, if he grant the reversion to another and the tenant attourneth, all the rent and service passeth by the word of the grant of reversion, for this that all the rent and service in such case be incidents to the reversion, and passe by the grant of reversion. But though he grant the rent to another, the reversion passeth not by such grant &c. And so note well the diversity. And so it is holden Pasch. 12. E. 4 f 3. But it is adjudged An. 26 Lib. Ass pl. 38, 39. whereas the services of the tenant in taile were granted, that that was a good grant, yet notwithstanding the reversion remaines.

Also if there be Lord, Meine, and Tenant, and the Tenant holdeth of the Meine by the rent of five shillings, and the Meine holdeth over by twelve pence if the Lord above purchase the tenancy in fee, then the service of the Mesnalty is extinct, for this, that when the Lord above hath the tenancy, he holdeth of the Lord next above him. And if he ought to hold it of him that was Meine, then he should hold one selfe tenancy immediately of divers Lords, which should be inconvenient, and the Law will sooner suffer a mischiefe than an inconvenience, and for this the seigniory of the Mesnalty is extinct. But insomuch that the tenant held of the Meine by five shillings, and the Meine held but by twelve

pence, so that he had more advantage by foure shillings then he payed to his Lord, he shall have the said foure shillings as rent secke yearely of the Lord that purchased the tenancy.

Also if a man hath rent secke, is once seised of any parcell of the rent, and after if the tenant will not pay the rent that is behind this is his remedy: It behoveth him to go by himselfe, or by another, to the lands and tenements, whereof the rent is issuing, and there to demand the arrerages of the rent. And if the tenant deny to pay it, this denying is a disseisin of the rent. Also, if the tenant at the time be not ready to pay it, this is a denying and a disseisin. Also, if the tenant, nor none other be dwelling upon the lands or tenements when he asketh the arrerages, &c. this is a denying in law, and a disseisin indeed, and of such disseisins he may have an action of Novel disseisin against the tenant, and recover the seisin of the rent and the arrerages, and his damages and costs of his writ and of his plea, &c. And if after such recovery the rent be another time denied him, then he shall have a Redisseisin, and recover double damages.

And it is to be had in mind, that this name Assise, is Equivocum, for sometime it is taken for a Jury for in the beginning of the record of Assise of Novel disseisin, the record shall begin thus, (Assisa venit recogn') which is to say, that Juratores ven recogn', and the cause is for this, that by the writ of Assise is commanded to the Sheriffe, Quod facit xii. liberos & legales homines de vicinero, &c. videre tentum illud, & nomina eorum imbreviare, & quod summon eos per bonos

bonos ſummon' quod ſint coram Juſticiariis, &c. paratꝰ inde facere recognitionem, &c. And for this, that by force of ſuch an originall Writ, a Pannell by force of the ſame Writ ought to be returned, &c. it is ſaid in the beginning of the Record in Aſſiſe, Aſſiſa venit recogñ' &c. Alſo in Writ of Right it is commonly ſaid, that the tenant may put him in God, and in the great Aſſiſe, &c. Alſo there is a Writ in the Regiſter called, De magna Aſſiſa eligenda: ſo is this a good proofe that this name Aſſiſe is ſometime put for the Jury, and ſometime it is taken for all the Writ of Aſſiſe, and after that intent it is moſt properly and moſt commonly taken, as Aſſiſe of Novel diſſeiſin, is taken for all the Writ of Aſſiſe of Novel diſſeiſin: In the ſame manner Aſſiſe of common of paſture, is taken for all the Writ of Aſſiſe of common of paſture, and Aſſiſe of Mordaunceſter, and Aſſiſe of Darreine preſentmt. &c. But it ſeemeth that the cauſe why ſuch Writs at the beginning were called Aſſiſes, is for this, that by every ſuch Writ it is commanded to the Sherife, that he ſummon twelve, &c. which is as much to ſay, that he ought to ſummon a Jury &c. and ſometime Aſſiſe is taken for an ordinance, for to ſet certaine things in a certaine rule and diſpoſition, as an ordinance that is entred in the ancient eſtatutes is called, Aſſiſa panis & ſervitiæ.

Alſo, if there be Lord & tenant, and the Lord granteth the rent of his tenant by deed to an other, ſaving to him the other ſervices, and the tenant attourneth, that is the rent ſecke, as it is aforeſaid: But if the rent be denied him at the

next day of payment, he hath no remedy, for this that he had not thereof any possession: But if the tenant when he attourneth to the grantee, or after, will give a penny, or a halfe penny to the grantee in name of seisin of rent, then if after at the next day of payment the rent be denied him, he shall have an Assise of Novel disseisin. And so it is, if a man grant by his deed a yearely rent issuing out of his land to another, &c. if the grantor then after pay to the grantee a penny, or an halfe penny, in the name of seisin for the rent, then if after the first day of payment the rent be denied, the grantee may have an Assise, or else not.

Also, of rent seck a man may have an Assise of Mordaunceſter, or a writ of Aiel, or Cosinage, and all other manner of actions reals as the case lieth, as he may have of any other rent.

Also there be three causes of disseisin of rent service, that is to say, Rescous, Replevin, and Enclosure. Rescous is, when the Lord distreineth in the land holden of him for his rent behind, if the distresse be rescued from him, or the Lord come upon the land, and would distraine, and the tenant, or another man will not suffer him, &c. Replevin is, when the Lord hath distrained, and Replevin is made of the distresse, by writ, or by plaint, &c. Enclosure is, if the lands and tenements be so enclosed, that the Lord may not come within the lands and tenements for to distraine. And the cause why such thing is done be disseisins made to the Lord, is for this, that by such things the Lord is disturbed of the meane by which he ought to have come to his rent. And

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foure cauſes be of diſſeiſin of rent charge: that is to ſay, Reſcous, Replevin, Incloſure and Denier, for denying is a diſſeiſin of rent charge, as it is aforeſaid of rent ſecke. And two cauſes be of diſſeiſin of rent ſecke: that is to ſay, Incloſure and Denier. And yet it ſeemeth that there is another cauſe of diſſeiſin of all the three rents aforeſaid, that is, when the Lord is going to the land holden of him for to diſtraine for the rent being behind, the tenant hearing this, encountreth him, and foreſtalleth him the way with force and armes, and menaceth him in ſuch forme, that he dare not come to the land to diſtraine for his rent behind, &c. for doubt of death or bodily hurt, this is a diſſeiſin, for this, that the Lord is diſturbed of the meane whereby he ought to come to his rent. And ſo it is if by ſuch foreſtalling and menacing, he that hath rent charge, or rent ſecke is foreſtalled, or dare not come to the land to aſke the rent behind.

Thus endeth the ſecond Book.

Parceners.

Parceners.

Parceners be in two manners: that is to say, Parceners after the course of the Common Law and Parceners after the Custome. Parceners after the course of the Common Law, be where a man or woman is seised of certain lands or tenements in fee simple, or fee taile and hath no issue but daughters and dieth, and the tenements descend to the daughters, and the daughters enter into the lands & tenements so to them descended, then they be called parceners, and be but one heire to their Ancestor, and they be called Parceners, for this, that by the writ that is called Breve de participatione facienda, the law will constraine them that Participation shall be made among them, and if there be two daughters to whom the land descendeth, then they be called two parceners, and if they be three daughters, they be called three parceners, and foure daughters foure parceners, and so forth. And if a man seised of lands in fee simple, or fee taile, die without issue of his body, and the tenements descend to his sisters, they be parceners as is aforesaid. In the same manner it is, where he hath no sisters,

ſters, but the land deſcendeth to his Aunts, they be parceners. But if a man hath but one daughter, ſhe may not be ſaid parcener, but daughter and heire. And it is to wit, that partition betweene parceners may be made in divers manners: One is, when they agree to make partition, and make partition of the tenements, as if there be two parceners, to divide betweene them the tenement in two parts, every part by himſelfe in ſeverality of even value, and if there be three parceners, to divide the tenements in three parts in ſeverality. Another partition there is to chuſe by agreement betweene them, certains of their friends to make the partition betweene them of the Lands and Tenements in the forme aforeſaid And in ſuch caſes after ſuch partitions the eldeſt daughter ſhall chuſe firſt one of the parts ſo divided, which ſhe will have for her part And then the ſecond daughter after her another part, &c. if it ſo be that there be many ſiſters: if it be not that they be otherwiſe agreed betweene them. for it may be agreed betweene them that one of them ſhall have ſuch Tenements, and another ſuch Tenements, &c. without any ſuch firſt Election, and the part that the elder ſiſter hath, is called in Latine, Capitia pars. But if the Parceners agree that the elder ſiſter ſhall make partition of the tenements in the forme aforeſaid, and if ſhe do then it is ſaid that the elder ſiſter ſhall chuſe the laſt part after each of her other ſiſters. Another partition and allotting there is, as if there be foure Parceners, and after ſuch partition made of the Lands, every part of the Land is by it ſelfe

written

ſwitten in a little ſcrowle, and it is covered all in ware, in manner of a little ball, ſo that no man may ſee the ſcrowle, then are the foure balls of ware put in a Bonnet to keep in the hands of an indifferent man, and then the elder daughter firſt ſhall put her hand in the bonnet, which ſhall take a ball of ware, and the ſcrowle within the ſame ball for her purpart. And then the ſecond ſiſter ſhall put her hand in the Bonnet, and ſhall take another. And ſo then the third ſiſter the third ball, &c. And in this caſe it behoveth each of them to hold them to their chance and allotment.

Alſo another partition there is, as if there be foure Parceners, and they will not agree that partition ſhall be made between them, then one of them may have a writ de Participatione faciendâ againſt the other three ſiſters, or two may have a writ of Participatione faciendâ againſt the other, or they three againſt the foure at their election and when judgement ſhall be given upon ſuch a writ, the judgement ſhall be ſuch, that partition ſhall be made between the parties, and the Sheriffe in his proper perſon ſhall go to the lands and tenements, &c. and there by the oath of twelve true men of his Bailiwick, &c. ſhall make partition between the parties, the one part of the ſame lands ſhall be aſſigned to the plaintife, or to one of the plaintifes, and another part to another, &c. not making mention in the judgment of the eldeſt ſiſter more than of the yongeſt, and of the partition that he hath thus done, he ſhall make notice to the Juſtices &c. under his ſeale, and the ſeals of twelve, &c. And ſo in this

caſe

case may you see, that the elder sister shall not have the first election, &c. But the Sheriffe shall assigne the part that she shall have, &c. and it may be that the Sheriffe will assigne the first part to the yonger sister, and the last part to the elder.

And note well, partition by agreement betweene Parceners may by the Law be made among them, as well by word without deed, as by deed.

Also, if two meales descend to two Parceners, and the one meale is worth by yeare twenty shillings, and the other but ten shillings by year, in this case partition may be made between them in such forme, that the one parcener shall have the one meale, and the other parcener shall have the other meale, and she that shall have the meale of twenty shillings, and her heires shall pay a yearely rent of five shillings, issuing out of the same meale to the other Parcener and to her heires for ever, because that every of them shall have even in value, and such partition made is good enough, and the same Parcener that shall have the rent of five shillings, and her heires may distraine for the rent of common right in the same meale of the value of twenty shillings, if the rent of five shillings be behind at any time, in whose hands soever the same meale commeth, though there were never writing made of it betweene them. In the same manner it is of partition of all manner of Lands and tenements, &c. where such rent is reserved to one, or to divers parceners upon such partition, &c. but such rent is not rent service, but rent charge, of common

right

right had & reserved for egality of the partition. And note well that none be called Parceners by the Common Law, but women or the heires of women, and which come by Lands and Tenements by descent, for if sisters purchase lands or tenements, of this they be called Jointenants and not Parceners. Also if two Parceners of land in fee simple make partition between them, &c. And the part of the one valueth much more than the part of the other, if they were at the time of partition of full age, that is to say, of one and twenty yeares, then they alway shall abide and never be defeated: But if the Tenements whereof partition is made, be to them in fee taile, and the part that the one hath is much better in yearely value than the part of the other, howbeit that they be excluded during their lives to defeat the partition, yet if the parcener that hath the lesser part in value hath issue and dieth, the issue may disagree to the partition and enter, and occupie in common that other part which is allotted to her Aunt, and so the Aunt may enter and occupy in common the other part allotted to her Sister, as if no partition thereof had been made, &c.

Also, if two Parceners of tenements in fee take husbands, and they and their husbands make partition between them, if the part of the one be lesse in yearely value than the part of the other, during the lives of the husbands the partition shall be in his force and strength: yet after the death of the husband the wife that hath the lesse part may enter in her sisters part as it is aforesaid, and defeat the partition. But if the

partition

partition so made between them were such, that every part at the time of allotment were equall of yearely value, then it may not after be defeated in such cases.

Also, if there be two parceners and the younger of them be within the age of one and twenty yeares, and partition is made between them, so that the part that is allotted to the younger is lesse in value than the part of the other: In this case the younger during the time of her nonage, and also when she commeth to full age of one and twenty yeares, may enter in the portion to her sister allotted, &c. and defeat the partition: But such a parcener ought to take heed when she commeth to full age, that she ne take to her own use all the profits of the tenements to her allotted, for by that she agreeth to the partition at such age, in which case the partition shall stand and abide in his force and strength, &c. but peradventure the profits of the halfe she may take leading the profits of the other halfe to her sister, &c. It is to wit, that when it is said, males and females be of full age, that shall be understood of the age of one and twenty yeares: for if any feoffment or grant, release, confirmation, obligation, or any other writing before any such age be made by any of them, &c. or that any within such age be Baylife or Receiver with any man, &c. all serveth for nought, and may be avoided. Also a man before such age shall not be sworne in no Jury, nor no Inquisition.

Also if tenements be given to a man in the taile, which hath as much land in Fee simple,

and hath issue two daughters and dieth, and the daughters make partition between them, so that the lands in fee simple be allotted to the younger daughter, in allowance of the Tenements tayled, allotted to the elder daughter, if after such partition the younger daughter alieneth the land in Fee simple to another in Fee, and hath issue a son or a daughter and dieth, the issue may enter in the Tenements tailed, and them hold in purparty with their Aunt, and this is for two causes: One is for that that the issue may have no remedy of the Land alienᵈ by the mother, for that the land was to her in fee simple, and inasmuch as he is one of the heires in the taile, and hath nothing recompenced of that that to him belongeth of the tenements tailed, it is reason that he have his purparty of the land in taile, and namely, when such Partition maketh no discontinuance of the taile, as shall be said hereafter in the chapter of Discontinuance. But the contrary is holden M 20. H 6. fol. 13. that is to say, that he may not enter upon the parcener that hath the land tailed, but is put to his suit by writ of Formedon. Another cause is, for that it shall be counted the folly of the elder sister, that she would agree to the partition where she might have had halfe the land in fee simple, and halfe the tenements in the taile for purparty, and so to be sure without damage &c.

Also if a man seised of a plough land by just title, disseiseth an infant within age of another plough land, and hath issue two daughters, and dieth seised of both those plough lands, the infant then being within age, and the daughters

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enter and make partition, and the one plough land is allotted for the purparty of the one, as percase to the younger ſiſter in alloſwance of the other plough land ſwhich is allotted to the purparty of the other, ſo that after the infant entreth in the plough land of the ſwhich he was diſſeiſed, upon the poſſeſſion of the parcener that hath the ſame plough land, then the ſame parcener may enter into the other plough land that her ſiſter hath, and holdeth in parcenary with her: But if the younger ſiſter alien the ſame plough land to another in fee ſimple before the entry of the Infant, and after the child entreth upon the poſſeſſion of the aliene, then ſhe may not enter into the other plough-land, for this, that by her alienation ſhe hath utterly diſmiſſed her ſelfe to have any part of the tenements as parcener: But if the younger ſiſter before the entry of the Infant make thereof a leaſe for terme of yeares, or for terme of life, or in fee taile, ſaving the reverſion to her, and after the child entreth, there peradventure it is otherwiſe, for this, that ſhe diſmitteth not her ſelfe of all that was in her, but hath reſerved to her the reverſion and the fee ſimple, &c.

Alſo, if there be three or foure Parceners that make partition between them, if the part of the one parcener be defeated by ſuch lawfull entry ſhe may enter and occupy the other Lands of all the other parceners, and compell them to make new partition of the other lands between them &c.

Alſo, if there be two Parceners, and the one taketh an husband, and the husband and the

wife have iſſue between them, and the wife dieth, and the husband holdeth him in the halfe as tenant by the curteſie: in this caſe the parcener that ſurviveth, and the tenant by the curteſie may well make partition between them, &c. And if the tenant by curteſie will not agree to make partition, then the parcener that ſurviveth may have a Writ de Participatione facienda, &c. and compell him to make partition. But if the tenant by the curteſie will have partition between them and the parcener that ſurviveth will not have it, then the tenant by the curteſie ſhall have no remedy for to have partition: for he may not have a Writ de Participatione facienda, for this, that he is not parcener, for ſuch a Writ lyeth for Parceners only. And ſo may ye ſee that the Writ de Participatione facienda lyeth againſt tenant by the curteſie, and yet himſelfe may not have ſuch a Writ.

Parceners by Cuſtome.

PArceners by the Cuſtome be where a man ſeiſed in fee or fee taile of lands or tenements that be of the tenure called Gavelkind within the Shire of Kent, and hath iſſue divers ſons and dieth, ſuch Lands and Tenements ſhall deſcend to all the ſons by the cuſtome, and they evenly ſhall inherit and make partition between them by the cuſtome as females do, and a Writ de Participatione facienda lieth in this caſe as between females, but it behooveth in the declaration to make mention of the cuſtome. Alſo ſuch cuſtome is in other places in England.

England. And also such custome is in North wales.

Also there is another Partition that is of another nature, and in another forme than any of the partitions aforesaid: As a man seised of certaine lands in fee simple hath issue two daughters, and the elder is married, and the father giveth parcell of the same lands to the husband with his daughter in frankmarriage and dieth seised of the remnant, the which remnant is of more greater value by yeare than be the Lands given in franke marriage: In this case the husband & the wife shall have nothing for their part of the said remnant, but if they will put in their lands given in frankemarriage in hotchpot with the remnant of the Land with her sister, and if they will not do so, then the younger sister may occupy the same remnant and take to her the profits only. And it seemeth that this word Hotchpot is in English a pudding, for in such a pudding is commonly put not one only thing, but one thing with another, and for this it behoveth in such case to put the Lands given in Frankemarriage with the other Lands in Hotchpot. if the husband and the wife will have any thing in the other remnant, &c. This word Hotchpot is but a terme of similitude, and is as much to say, as to put Lands given in Frankmarriage, and other Lands in Fee simple &c. together, and this is to such intent to account the value of all the Lands, that is to say, of the Lands given in Frankmarriage, and the remnant that was not given, and then partition shall be made in this

forme that enſueth. As put caſe that a man is ſeiſed of thirty acres of Land in fee ſimple, every acre in value twelve pence by the yeare, which hath iſſue two daughters, and the one is covert baron, and the father giveth ten acres of the thirty acres to the husband with his daughter in frankmarriage, and dieth ſeiſed of the remnant, then the other ſiſter ſhall enter into the remnant, that is to ſay, in the twenty acres and ſhall occupy it to her owne uſe except the husband and the wife will put their ten acres given to them in frankmarriage with the other twenty acres in hotchpot, that is to ſay, together, and then when the value is knowen of every acre, that is to ſay, every acre is yearely worth twelve pence then the partition ſhall be made in ſuch forme, that is to ſay, that the husband and the wife ſhall have above the ten acres given to them in frankmarriage five acres in ſeverality of the xx acres, and the other ſiſter ſhall have the remnant that is, xv acres of the xx. acres for her part, ſo that accounting the ten acres that the husband and the wife had in frankmarriage, and the other five acres of the twenty acres, the husband and the wife have as much in yearely value as the other ſiſter hath, and ſo alwaies upon ſuch partition the Lands given in frankmarriage, abide to the donees, or to the heires, &c. after the forme of the gift, &c. For if the other parcener ſhould have any thing of this that is given in frankmarriage, of this ſhould follow an inconvenience and a thing againſt reaſon, which the Law will not ſuffer &c. And the cauſe why the lands given in frankmarriage ſhall be put

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in hotchpot, is this, that when a man giveth lands and tenements in frankmarriage with his daughter, or with his other cosin, it is to be understood by the Law, that such gift made by such words, Frankmarriage is an advancement of his daughter, or of his cosin, and namely, when the donor and his heires shall not have any rent or service of him, except fealty, untill the fourth degree be passed, &c

And for such cause the Law is that she shall have nothing of the other lands and tenements descended to the other parceners, &c if she will not put the tenements given in frankmarriage in Hotchpot, as is aforesain, and if she will not put the lands given in frank marriage in Hotchpot, then she shall have nothing in the remnant, for this, that it shall be understood by the Law, that she is sufficiently advanced, to which advancemẽt she agreeth & holdeth her self contented.

The same Law is between the heires of the Donees in Frankmarriage & the parceners, &c. if the Donees in Frankmarriage die before their Ancestors or before such partition, &c. as to put in Hotchpot, &c.

And note well, that gift in Frankmarriage was by the Common Law, before the Statute of Westminster the second, and alway after so hath been used and continued, and so forth.

Also such putting in hotchpot, &c is where the other lands or tenements that were not given in frankmarriage descend from the donor in frankmarriage only; for if the lands descend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the do-

nor, or other Ancestors and not by the donor, &c. there it is otherwise for in such case she to whom such gift in Frankmarriage is made, shall have her part as if no such gift in Frankmarriage had been made, for this, that she was not advanced by him, &c. but by another.

Also, if a man seised of thirty acres of Land, every acre of even yearely value, having issue two daughters, as is aforesaid, and giveth of this to the husband of the daughter fifteene acres in frankmarriage, and dieth seised of the other fifteene acres, in this case that other sister shall have the fifteen acres so descended to her only, and the husband and the wife shall not put in such case the fifteene acres to him given in Frankmarriage in Hotchpot, &c. for this, that the Tenements given to him in Frankmarriage be of as good yearely value as the other lands descended, &c. For if the lands given in Frankmarriage were of as even value as the remnant, or of more value, then in vaine and to none intent such lands given in frankmarriage shall be put in hotchpot, &c. for this that she may have nothing of the other lands descended, &c. For if she should have any parcell of the other lands descended, then should she have more in yearely value than her sister, &c. which the Law will not &c. And as it is said in the cases aforesaid of two daughters, or two parceners, in the same manner, and in like case is, where there be moe sisters, after that as the case and the matters be, &c.

And it is to wit, that lands and tenements given in Frankmarriage, shall not be put in Hotch-

Hotchpot, but with the lands descended in fee simple; for of lands descended in fee taile, partition shall be made as if no such gift in Frankmarriage had been made. Also no lands shall be put in Hotchpot with other, but lands that be given in Frankmarriage only. For if any woman have any other lands or tenements by any other gift in the taile she shall never put such lands so given in Hotchpot, &c. but she shall have the part of the remnant descended, &c. that is as much as the other parcener shall have of the same remnant.

Also another Partition may be made between Parceners, that varieth from the partitions aforesaid: As if there be three Parceners, and the youngest would have partition, and the other two would not, but will hold in parcenary that that to them belongeth without partition: In this case if one part be allotted in severality to the younger sister after that that she ought to have, then the other may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good enough. And if after the elder and middle parcener will make partition between them of that that they hold, they may well do so when they please But where partion shall be made by force of a Writ de Participatione facienda, &c. there otherwise it is, for there it behoveth that every parcener have his part in severalty, &c. More shall be said of Parceners in the Chapter of Joyntenants, and also in the Chapter of Tenants in Common.

Joyntenants.

JOyntenants be, as a man ſeiſed of certaine lands or tenements, &c. and thereof hath inſeoffed two, or three, or foure, or more, to have & to hold to them and to their heires, or to have and hold to them for terme of their lives, or for terme of anothers life, by force of which feoffment they be ſeiſed, ſuch be Joyntenants.

Alſo, if two or three diſſeiſe another of any lands or tenements to their own uſe, then the diſſeiſors be Joyntenants: But if they diſſeiſe another, to the uſe of one of them, then be they no Joyntenants, but he to whom the uſe of the diſſeiſin is made is ſole tenant, and the other have nothing in the tenancy, but be called coadjutors to the diſſeiſin, &c.

And note well, that diſſeiſin is properly where a man entreth into any Lands or Tenements, where his entry is not lawfull, and putteth him out that hath the franktenement, &c. And it is to wit that the nature of joyntenancy is, that he that ſurviveth ſhall have only the whole tenancy, after ſuch eſtate as he hath if the joynture be continued, &c. As if three joyntenants be in fee ſimple, and the one hath iſſue and dieth, yet they that ſurvive ſhall have the tenements whole, and the iſſue ſhall have nothing, and if the ſecond joyntenant have iſſue and die, yet the third that ſurviveth ſhall have the tenements whole, and ſhall have them in fee ſimple to him and to his heires. But otherwiſe it is of parceners, for if three parceners be, and be-

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fore any partition the one hath issue and dieth, that that to her belongeth shall descend to her issue, and if such a parcener dye without issue, then that that to her belongeth shall descend to her cohetres, so that they shall have this by descent, and not by the survivor as Jointenants have, &c. And as the survivor holdeth place among Jointenants, &c. in the same manner it holdeth place among them that have joint estate or possession with others of chattels reall or chattels personall. As if a lease of lands or tenements be made to many for terme of yeares, he that surviveth of the Lessees shall have the tenements whole to him during the terme by force of the same lease. And if an horse, or other chattell personall be given to many men, he that surviveth shall have them to himselfe.

In the same manner it is of debts and duties, &c. For if an obligation be made to many for one duty, he that surviveth shall have all the debt, and so it is of all other covenants and contracts.

Also some jointenants may be that may have joynt estates, and be joyntenants for terme of their lives, and yet they have severall inheritance: As if lands be given to two men, and to the heires of their two bodies ingendred: In this case the donees have joynt estate for terme of their two lives, and they have severall inheritance: for if the one of the donees have issue and die, the other that surviveth shall have all by the survivor for terme of his life. And if he that surviveth hath also issue and die, then the issue of the one shall have the halfe of the land, and the

issue

iſſue of the other ſhall have the other halfe of the Land, and they ſhall hold the land betweene them in common, and be not joyntenants, but tenants in common. And the cauſe that ſuch Donees in ſuch cafes have joynt eſtate for terme of their lives, is this, for this that at the beginning Lands were given to them two, which words without more ſaying, made a joynt eſtate to them for terme of their lives. For if a man will let land to another by deed, or without deed, not making mention what eſtate he hath, and of this maketh livery of ſeiſin: In this caſe the Leſſee ſhall have eſtate for terme of his life, and ſo in ſo much that the lands were given to them, they have a joynt eſtate for terme of their lives. And the cauſe why they have ſeverall inheritance is this, inſomuch that they cannot by poſſibility have an heire betweene them ingendred as a man and a woman may have, &c. then the Law will that their eſtate and their inheritance ſhall be ſuch, as reaſon will after the forme and effect of the words of the gift. and that is to the heires that the one ingendreth of his body by any of his wives, and the heires that the other ingendreth of his body by any of his wives, &c. So it behoveth by neceſſity of reaſon, that they ſhall have ſeverall inheritances. And in ſuch caſe, if the iſſue of one of the donees afeer the death of the donees die, ſo that he hath no iſſue alive of his body ingendred, then the donor or his heires may enter in the halfe as in his reverſion, though the other of the donees hath iſſue alive, &c. And the cauſe is, for ſo much

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as the inheritance is severed, &c. the reversion in the Law is severed &c. and the survivor of the issues of the other shall hold no place to have the whole. And so as it is said of males, in the same manner it is where land is given to two females, and to the heires of their two bodies begotten.

Also if Lands be given to two females, and to the heires of one of them this is a good Joynture, and the one hath a freehold, and the other hath fee simple, and if she that hath the fee dye, she that hath the freehold shall have the whole by the survivor for terme of life. In the same manner it is where tenements be given to two and to the heires of the body of one of them ingendred, the one hath freehold. and the other fee taile. Also if two Joyntenants be seised of estate of fee simple, and the one granteth a rent charge by his deed to another out of that that to him belongeth &c. In this case during the life of the grantor, the rent charge is effectuall But after his decease the rent charge is void as to charge the land, for that he that hath the land by the survivor, shall have the land discharged: And the cause is for this, that he that survyveth claimeth to have the land by the survivor, &c. and not by descent of his fellow &c. But otherwise it is of parceners; for if there be two parceners of tenements in fee simple, and before any partition the one chargeth that that to him belongeth by his deed, with a rent charge, &c and dieth without issue, and that that to him belongeth, descendeth to the other parcener: In this case the other Parcener shall hold the Land charged, &c. for this

this that he commeth to the halfe by descent as heire, &c.

Also if there be two Joyntenants in fee simple within a Burrough where the Lands and Tenements within the same Burrough be devisable by Testament, if the one of the said Joyntenants devise that, that to him belongeth by Testament, &c. and dye, this devise is void. And the cause is this, that no devise may take effect but after the death of the devisor. And for this that by his death all the Land incontinents commeth by the law to his fellow that surviveth, by the survivor, which neither claimeth nor hath any thing in the land by the devise, but in his own right by the survivor after the course of the Law, &c. for this cause such devise is void.

But otherwise it is of Parceners seised of tenements devisable in such case of devise, &c. Causa qua supra.

Also it is commonly said, that every Joyntenant is seised of the land that he holdeth joyntly, &c. throughout and by all. And this is as much to say that he is seised by every parcell, and by all, &c and this is true for in every parcel, and by each parcell, and by all the lands & tenements he is joyntly seised with his fellows, &c.

And if two Joyntenants be seised of certaine Land in fee simple, and the one letteth that that to him belongeth to a stranger for terme of forty yeares, and dieth within the terme: In this case after his decease the Lessee may enter and occupy the halfe to him letten during the terme, &c. though the Lessee never had possession of it in the

life

like of the Lessor by force of this leafe, &c. And the diversity between the case of the grant of a rent charge, and this case is this, for in the grant of a rent charge by a joyntenant the tenements abide allway as they were before without that, that any hath any right to have parcell of the tenements but himselfe, and the tenements abide in such plight as they were before the charge, &c. But where a Leafe is made by a Joyntenant to another for terme of yeares, &c. incontinent by force of the Leafe the Lessee hath right in the same land, that is to say, of all that that to his Lessor belonged, and to have that by force of the same leafe during his terme, &c. and this is the diversity, &c.

Also Joyntenants if they will may make partition between them, and the partition is good enough, but they shall not be compelled by the Law to do it, but if they will make partition of their proper will and agreement, the partition shall stand in his strength P. 3. E. 4. See Sta. 31. H 8 ca. 21 and 32. H 8 ca. 32.

Also if a joynt estate be made of land to the husband and the wife, and to a third person, in this case the husband and the wife have not in the Law in their right but the halfe &c. And the third person shall have as much as the husband and the wife have, that is to say, the other halfe, &c And the cause is, for that the husband and the wife be but one person in the Law, and be in like case as if the estate be made to two joyntenants where each one hath by force of the joynture the one halfe, and the other the other halfe. In the same manner it is, where an estate

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is made to the husband and the wife, and to other two men, in this case the husband and the wife have not but the third part, and the other two men the other two parts, &c. Causa qua supra. Where shall be said of the matter touching Joyntenancy, in the Chapter of Tenants in Common.

Tenants in Common.

TEnants in Common be they, that have lands and tenements in fee simple, fee taile, or for terme of life, &c. which have such lands and tenements by severall title, and not joynt title, and none of them knoweth that that is severall to him. But they ought by the Law to occupy such lands and tenements in common and undivided to take the profits in common. And because that they come to such lands and tenements by severall titles, and not by one selfe joynttitle, and their occupation and possession shall be by the Law among them in common, therefore they be called Tenants in Common: as if a man enfeoffe two Joyntenants in fee, and one of them alieneth that that to him belongeth to another in fee, now the other Joyntenant and the alienee be tenants in common, for this that they be seised in such tenements by severall titles, for the alienee commeth to the halfe by the feoffment of the one joyntenant, and the other joyntenant hath the other halfe by force of the first feoffment made to him and to his first fellow, and so they be in by severall titles, and by severall feoffments, &c. And it is to wit, that when it is said

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in any Book, that a man is seised in fee without more saying, it shall be understood fee simple, for it shall not be understood by such word in fee, that a man is seised in fee taile, except that there be put thereto such addition, that is to say, fee taile

Also if three Joyntenants be, and the one of them alieneth that that to him belongeth to another in fee: In this case the alienee is tenant in common with the other two Joyntenants. But yet the other two Joyntenants be seised of the two parts joyntly, and of those two parts the survivor between them holdeth place &c.

Also if there be two Joyntenants in fee, and the one giveth that that unto him belongeth to another in the taile, the donee and the other joyntenant be tenants in common &c. But if the Lands be given to two men, and to the heires of their two bodies ingendred, the donees have joynt estate for terme of their lives, and if each of them have issue and dye, their issue shall hold in common, &c. But if Lands be given to two Abbots, as to the Abbot of Westminster, and to the Abbot of Saint Albons, to have and to hold to them and to their successors, in this case they have incontinent at the beginning estate in common, and not joynt estate: And the cause is for this, that every Abbot, or other Soveraign of an house of Religion, before that he be made Abbot, or Soveraign, was but a dead man in the law. And when he is made Abbot, he is as a man personable in the Law, all only to purchase, and to have Lands and Tenements, and other things to the use of his house, and not to his own proper use, as other secular

men may. And for this in the beginning of their purchase, they be tenants in common. And if one of them die, the Abbot that survives shall not have all by the survivor, but the successor of the Abbot that dieth shall hold the halfe in common with the Abbot that survives, &c.

Also if lands be given to an Abbot and to a secular man, to have and to hold to them, that is to say to the Abbot and his successors and to the secular man to him and to his heires, they have estate in common, Causa qua supra.

Also if lands be given to two men, to have and to hold, the one halfe to the one and to his heires, and the other halfe to the other and to his heires, they be tenants in common, &c.

Also if a man seised of certaine Lands enfeoffeth another in the halfe of the same land, without any speech of allignment or limitation of the same halfe in severalty at the time of the feoffement, then the feoffee and the feoffor shall hold the parts of the land in common. And in the same manner, as is aforesaid of tenants in common of lands or tenements in fee simple, or in fee taile, in the same manner may it be said of tenants for terme of life. As if two Joyntenants be in fee, and the one letteth to a man that that unto him belongeth for terme of life, and the other Joyntenant letteth that that to him belongeth to another for terme of life, these two lessees be tenants in common for terme of their lives, &c.

Also if a man let lands to two men for terme of their lives, and the one granteth all his estate of that that unto him belongeth to another, &c. then the other tenant for terme of life, and he to whom the grant is made be tenants in common during

during the time that both lessees be alive.

Also it is to be remembred, that in all other such cases, though that they be not here expressly named or specified, if they be in like reason, they be in like law.

Also if there be two Joyntenants in fee, and the one letteth that that unto him belongeth to another for terme of life the tenant for terme of life during his life, and the other joyntenant that did not let the tenants in common. And upon this case a question may rise, as this: Put the case that the Lessor hath issue and dieth, living the other Joyntenant his fellow, and living the tenant for terme of life, the question may be such, if the reversion of the halfe, &c. that the lessor hath shall descend to the issue of the lessor, or that the other Joyntenant shall have it by the survivor. And some have said in this case, that the other Joyntenant shall have the reversion by the survivor, and their reason is such, when the Joyntenants were joyntly seised in fee simple, &c. though the one of them made estate of that that unto him belongeth for terme of life, and though that he hath severed the franktenement of that that to him belongeth by the Lease, yet he hath not severed the fee simple, but the fee simple abideth to him joyntly as it was before. And so it seemeth unto them that the other Joyntenant that surviveth, shall have the reversion by the survivor, &c. And others have said the contrary, & this is their reason, when one of the Joyntenants letteth this that to him belongeth to another for terme of his life, that by such Lease the franktenement is severed from the joynture: And by the same reason the reversion that is dependant upon the

same franktenement is severed from the joynture. Also if the Lessor had reserved to him a yearely rent upon the Lease, the Lessor only should have had the rent, &c. The which is a proofe that the reversion is only to him, and that the other hath nothing in the reversion &c. And if the tenant for terme of life were impleaded, &c. and made default after default, then the Lessor shall be only of this received to defend his right, and his fellow in this case in no manner shall be received: which proveth that the reversion of the halfe is only in the Lessor. And so by consequence if the Lessor die, living the Lessee for terme of life, the reversion shall descend to the heires of the Lessor, &c. and not come to the other Joyntenant by the survivor, Ideo quære: But in this case, if the Joyntenant that hath the franktenement have issue and die, living the Lessor and the Lessee then it seemeth that the issue shall have the halfe in his demesne as of fee by descent for this, that the franktenement may not by nature of the Joynture be annexed to a reversion And it is certaine, that he that did not let was seised of the halfe of his demesne and of fee, and none shall have any Joynture in his franktenement, Ergo this shall descend to his issue Sed quære. But if it be thus that the Law in this case is thus, that if the Lessor die living the Lessee, and living the other joyntenant that hath the Franktenement of the other halfe, that the reversion shall descend to the issue of the Lessor then is the joynture and the title that any of them may have by the survivor by right of the joynture annulled, and all utterly defeated for ever.

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In the same manner it is, if the Joyntenant that hath the Franktenement die, living the Lessor and the Lessee, if the Law be such that his Franktenement and fee that he hath in the halfe shall descend to his issue, then the joynture shall be defeated for ever, &c.

And if three Joyntenants be, and the one releaseth by his deed to one of his fellows all the right that he hath in the land, then hath he to whom the release is made, the third part of the lands by force of the release, and he and his fellow shall hold the other two parts jointly. And as to the third part that he hath by force of the release, he holdeth the third part with himselfe and his fellow in common.

And it is to wit, that sometime a deed of Release shall take effect, and shall be in ure to put the estate of him that made the Release, to him to whom the release is made, as in the case aforesaid.

And also if a joynt Estate be made to the husband and his wife, and to a third person, and the third person releaseth his right that he hath, &c. to the husband, then hath the husband the halfe that the third person had, and the wife of this hath nothing. And if in such case the third release, &c. to the wife, not naming the husband in the Release, then hath the wife the halfe that the third person had, and the husband hath nothing of this, but in right of his wife, for this that in such case the release shall inure to put the estate to him to whom the release is made, of all that that belongeth to him that made the release. And in some case a release shall

inure to put all the right that he hath that made the releaſe to him to whom the releaſe is made. As if a man ſeiſed of certaine Lands and Tenements is diſſeiſed by two diſſeiſors, if the diſſeiſee by his deed releaſe all his right, &c. to one of the diſſeiſors, then he to whom the releaſe is made, ſhall have and hold all the Tenements to him only, and put his fellow out of every occupation of it: and the cauſe is for this, that the two diſſeiſors were ſeiſed in the Tenements by wrong of them done againſt the Law. And when one of them hath the releaſe of him that hath right to enter &c this right in ſuch caſe reſteth in him to whom the releaſe is made, and in ſuch plight as if he that had the right had entred and enfeoffed him, &c. And the cauſe is for this, that he that before had an eſtate by wrong, that is to ſay by diſſeiſin, now by the releaſe hath a right full eſtate.

And in ſome caſe a releaſe ſhall enure by way of extinguiſhment, and in ſuch caſe ſuch releaſe ſhall help the Joyntenant to whom the releaſe is not made, as well as him to whom the releaſe is made. As if a man be diſſeiſed, and the diſſeiſor maketh a feoffment to two men in fee, if the diſſeiſee releaſe to one of the feoffees in fee by his deed, then ſuch a releaſe ſhall inure to both the feoffees, for this, that the feoffees have eſtate by the Law, that is to ſay, by the feoffment, and not by any wrong done to any other.

And in the ſame manner it is, if the diſſeiſor make a releaſe to a man for terme of life, the remainder over to another in fee, if the diſſeiſee releaſe to the Tenant for terme of life, all his right &c. this releaſe enureth as well to him in

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the remainder, as to the tenant for terme of life, &c. And the cause is for this, that the tenant for terme of life commeth to his estate by the course of the Law, and for this the release shall ennre and take effect by way of extinguishment of the right of him that hath released, &c. And by this release the tenant for terme of life hath no greater estate then he had before the release made unto him, and the right of him that released is all utterly extinct. And inasmuch that such release cannot inlarge the estate of the tenant for terme of life, it is reason that the release shall enure to him in the remainder, &c. More shall be said of Releases in the Chapter of Releases.

Also if there be two parceners, and the one alieneth that that unto him belongeth to another, then the other parcener and the alienee be Tenants in common

Also Tenants in common may be by title of prescription, if the one and his ancestors, or they whose estate he hath in the halfe, have holden in Common the same halfe with the other tenant that hath the other halfe and with his ancestors, of them whose estate he hath as undivided, from time whereof no memory runneth. And divers other matters may make and cause men to be tenants in common that be not here expressed

Also in some case tenants in common ought to have of their possession joynt all actions, and in some cases they shall joyne in one action: for if there be two Tenants in common, and they be disseised, they ought to have against the disseisor two Assises, and not one Assise, for every of them ought to have an Assise of his halfe, &c. and the cause is for this, that tenants in common were

ſeiſed by ſeverall titles: But otherwiſe it is of Joyntenants, for if there be twenty Joyntenants, and they be diſſeiſed, they ſhall have in all their names but one aſſiſe, becauſe that they have had but one joynt title.

Alſo if there be three Joyntenants, and one releaſeth to one of his fellows all the right that he hath, and after the other two be diſſeiſed of the whole &c. in this caſe the other ſhall have ſeverall Aſſiſes in this forme, that is to ſay, they ſhall have in both their names one Aſſiſe of the two parts, &c. for this that they held the two parts joyntly at the time of the diſſeiſin: And as to the third part, he to whom the Releaſe is made, ought to have thereof an Aſſiſe in his own name for this, that as to the third part he is tenant in common, &c. for this, that he came to the third part by force of the releaſe, and not only by force of the joynture.

Alſo, as to ſue actions that touch the realty, there is a diverſity betweene parceners that be in by divers deſcents, and tenants in common. For if a man ſeiſed of certaine lands in fee, have iſſue two daughters and dye, and they enter, &c. and each of them have iſſue a ſon, & dieth without partition made betweene them, by which the one halfe deſcendeth to the ſon of the one parcener, and the other halfe deſcendeth to the ſon of the other parcener, and they enter and occupy in common and be diſſeiſed: in this caſe they ſhall have in their two names one Aſſiſe, and not two Aſſiſes: and the cauſe is, that though they come in by divers deſcents &c. yet they be Parceners, & a writ de participatione faciendâ lieth betweene them, and they be not Parceners, having

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regard or respect only to the seisin and possession from their mothers, but they be parceners, having more respect to their estate that descended from their grandfather to their mothers: For they may not be parceners, where their mothers were not parceners before, &c. And so to such respect and consideration, that is to wit, as to the first descent, that was to their mothers, they have a title in parcenary, the which maketh them parceners: And also they be but as one heire to their common Ancestor, that is to say, to their Grandfather, from whom the land descended to their mothers: And for these causes before partition between them, &c. they should have one assise, though they come in by several descents, &c.

Also, if there be two tenants in common of certaine Lands in Fee, and they give the same Land to another man in the taile, or let it to another man for terme of life, yeelding an annuity, or certaine rent, and a pound of Pepper, or an Hawke, or an Horse, and they be seised of these services, and after all the rent is behind, and they distraine for it, and the Tenant maketh rescous: In that cases, as to the rent and the pound of Pepper, they shall have two Assises: And as for the Hawke, and the Horse, but one assise. And the cause why they have two Assises, as the rent and the pound of pepper, is this, inasmuch that they were Tenants in common by severall titles, and when they made a gift in the taile, or lease for terme of life, &c. saving to them the reversion, and yeelding to them certaine rent, &c. Such reservation is incident to their reversion. And for this that their rever-

reversion is in common, and by several titles as their possession was before, the rent and other things that may be severed and were to them reserved upon the gift, or upon the Lease, which be incident by the Law to the reversion, such things so severed were of the nature of the Reversion which reversion is to them in common by several titles.

And it behoveth that the rent of the pound of pepper, which may be severed be to them in common by several Titles. And of this they shall have two assises, and every of them in his assise shall make his plaint of the halfe of the rent, and of the halfe of the pound of pepper, &c.

But of the Hawke and the Horse which cannot be severed, they shall have but one assise, for a man may not make a plaint in assise of the halfe of an hawke, or the halfe of an horse, &c. In the same manner it is of other rents and services that Tenants in common have in grosse by divers titles.

Also, as to actions personals, Tenants in common ought to have such actions personals joyntly in all their names, that is to say, of trespasse, or of offences that touch their Tenements in common: as of breaking of their Houses, breaking of their Closes and pastures, wasting and defouling of their grasse, cutting of their wood, and to fish in their ponds, and such other: In this case tenants in common shall have one action joyntly, and recober joynt damages, because that the action is in the personalty, and not in the realty.

Also, if two tenants in common make a lease of their two tenements to another for terme of years,

yeares, yeelding unto them yearely a certaine rent, if the rent be behind, &c. the tenants shall have an action of Debt against the Lessee, and not divers actions, for that the action is in the personalty.

Also tenants in common may make partition between them if they will, though they shall not be compelled by the Law. But if they make partition between them by their agreement and consent, such partition is good enough, as it is adjudged in the book of Assises, P. 3. E. 4.

Also as there be tenants in common of lands or tenements, &c. as is aforesaid: In the same manner there be tenants in common of chattels reall, and chattels personall. As if a Lease be made of certaine lands to two men for terme of twenty years, and when they be therof possessed, the one of the lessees granteth that that unto him belongeth during the terme to another, then he to whom the grant is made, and the other shall hold and occupy in common.

Also, if two Joyntenants have the ward of the body and of the Lands of a child within age, and the one of them granteth to another that that unto him belongeth of the same ward, then the grantee and the other that granteth not, shall have and hold it in common, &c.

In the same manner it is of chattels personals: As if two have a joynt estate by gift or by buying of an Horse, or an Oxe, &c. the one of them granteth that that unto him belongeth of the same Horse, or Oxe, &c. Then the grantee and he that granteth not, shall have and possesse such chattell personall in common, &c. And in such cases where divers persons have chattels reals

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or personals in common, and by divers titles, and one of them die, the other that surviveth shall not have that by the survivor. But the executors of him that dieth shall hold and occupy that with him that surviveth as their testator did or ought in his life, &c. for this that their titles and right in this case were several.

Also, in this case aforesaid, if two have estate in common for terme of years, and the one occupy all and put the other out of his possession and occupation: then shall he that is put out of occupation, have against the other a writ de Ejectione firmæ for the halfe against the other. In the same manner it is where two hold the ward of Lands or Tenements during the nonage of a child, if one put out the other of his possession, he that is out shall have a writ of Ejectment de garde of the halfe, for this that those things be Chattels reals, and may be apportioned and severed, &c. But no such action of trespasse, that is to say, Quare clausum suum fregit, & herbam suam conculcavit & consumpsit, &c. and such like actions the one may not have against the other, for this that each of them may enter and occupy in common, &c. throughout and by all the tenements which they hold in common. But if two be possessed of chattels personals in common by divers titles, as of an horse, or an ore, or a cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedy but to take this of him that hath done to him the wrong for to occupy in common when he may see his time.

In the same manner it is of Chattels reall that may not be severed, as in the case aforesaid:

ſaid: Two be poſſeſſioners of a ward of the body of a child within age if one take the child out of the poſſeſſion of the other, the other hath no remedy by any action by the law but to take the child out of others poſſeſſion when he ſeeth his time.

Alſo when a man in pleading will ſhew a deed of feoffment made unto him, or a deed in the tayle, or a leaſe for terme of life of any lands or Tenements, there he ſhall ſay by force of which feoffment, gift, or leaſe, he was ſeiſed, &c. But where a man will plead a Leaſe or grant made unto him of a chattell reall or perſonall, there he ſhall ſay by force of which he was poſſeſſed.

More ſhall be ſaid of Tenants in common in the Chapter of Releaſes, and Confirmations.

Eſtates upon Condition.

ESTates that men have in Lands or Tenements upon condition, be in two manners: that is to ſay, they have eſtate upon condition in deed, or upon condition in Law. Upon condition in deed, is as a man by deed indented infeoffeth another in fee, reſerving to him and to his heires yearely a certaine rent, payable at one Feaſt, or at divers Feaſts by the year, upon condition, that if the rent be behind, &c. that it ſhall be lawfull to the feoffor and to his heires to enter into the Lands or Tenements, &c. Or if the Land be alienated to another in fee, to yeeld unto him certaine rent, &c. And if it hap that the rent be behind by a Weeke after any day of payment of it, or by a Moneth,

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or by a halfe yeare after any day of payment, that then it shall be lawfull to the feoffer and to his heires to enter, &c. In this case, if the rent be not paid at such a day, or before such a time limited and specified within the Condition compriſed in the Indenture, then may the Feoffer or his heires enter into such Lands or Tenements, and them in his first estate to have and to hold, and of this to put the Feoffee cleane out: And it is called Estate upon condition, for this, that the estate of the feoffee is defeasible, if the condition be not performed.

In the same manner it is if lands be given in the taile, or let for terme of life, or for terms of yeares, upon such condition, &c. But where a feoffment is made of certaine lands, reserving certaine rent upon such condition, that if the rent be behind, that it shall be lawfull for the feoffor and his heires to enter, and the land to hold till they be satisfied or payed of their rent behind, &c. In this case if the rent be behind, and the feoffor and his heires enter, the feoffee is not excluded cleane out, but the feoffor shall have and hold the land, and take the profits till that he be satisfied of the rent behind, &c. And when he is satisfied, the feoffee may reenter in the same land, and hold it as he did before, for in such case the feoffor shall have it but in manner for a distresse, in the meane time till he be satisfied of the rent, &c. though he take the profits in the meane time.

Also, divers words among other there be, that by vertue of themselfe make estate upon condition: One is this word of Condition, as A enfeoffed B. of certaine Land, to have and to

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hold to the same B. and to his heires upon condition, that the same B. and his heires shall pay, or do to be paid to the foresaid A. and to his heires yearely such rent, &c. In these cases without any more saying the feoffee hath estate upon condition. Also if the Condition were such, provided alway, that the aforesaid B. pay, or do to be paid to the aforesaid A. such rent: Or if they were thus, so that the aforesaid B. pay, or do to be payed such rent: In these cases without any more saying, the feoffee hath estate but upon condition, so that if he performe not the condition, the feoffor and his heires may enter, &c.

Also, other words there be in a deed that causeth the tenements to be conditionall, as upon such a Feoffment a rent is reserved to the feoffor, &c. and after it is put in the deed, that if it chance the aforesaid rent to be behind in part or in all, &c. that then it shall be lawfull to the feoffor and to his heires to enter, and this is a deed upon condition. But there is a diversity between the words (if it chance, &c.) and the words next aforesaid, for this word (if it chance, &c.) is nought worth to such condition, but if it hath these words following, that is to say, that it shall be lawfull to the feoffor and to his heires to enter, &c. But in these cases aforesaid it needeth not by the Law to put such clause, that is to say, that the feoffor and his heires may enter, &c for this, that they may so do by force of the words aforesaid, because they containe in themselves in the Law a Condition, that is to say, That the feoffor and his heires may enter Yet it is common in all such cases aforesaid, to put such clauses in the deeds, that is to say, if the rent

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be behind, &c. that it ſhall be lawfull to the ſame Feoffor and his heires to enter, &c. And this is well done to that intent for to declare and expreſſe to the lay men that be not learned in the Law, the manner and the condition of the feoffment, &c. As a man ſeiſed of land as of franktenement, lets the ſame land to another by deed indented for terme of yeares, yeelding unto him certaine rent, it is uſed to be put in the deed, that if the rent be behind at the day of payment, by a Month, &c. that then it ſhall be lawfull to the Leſſor to diſtraine, &c. and yet the Leſſor may diſtraine of common right for the rent behind, &c. though ſuch words never were ſet in the deed, &c.

Alſo, if a feoffment be made upon ſuch condition, that if the Feoffor pay at a certaine day, &c. twenty pounds of money, that then the Feoffor may enter, &c. In this caſe the Feoffee is called Tenant in Mortgage, that is as much to ſay in French, as Mortgage, and in Latine Mortuum vadium, and in Engliſh, a deed pledge. And it ſeemeth that the cauſe why it is called Mortgage, is that it ſtandeth in doubt if the feoffor will pay at the day limited, ſuch a ſum, or not: And if he pay not: then the land that is put in pledge upon condition for the payment of the money, is gone from him for ever, and ſo dead as to the Tenant, &c.

Alſo, as a man may make a Feoffment in fee in Mortgage, ſo may a man make a gift in the taile in Mortgage, and a leaſe for terme of life, or for terme of yeares in Mortgage. And all ſuch tenants be Tenants in Mortgage after the ſtate that they have in the Lands, &c.

Alſo, if a Feoffment be made in Mortgage, upon

upon condition that the Feoffor ſhall pay ſuch a ſum at ſuch a day, &c. as is betweẽ them by their deed indented accorded, and limited though the Feoffor dye before the day of payment, &c. yet if the heire of the Feoffor pay the ſum within the day to the Feoffee, or proffer him the money and the Feoffee refuſe to receive it, then may the heire enter into the Lands. And yet the condition is if the Feoffor pay ſuch a ſum ſuch a day, &c. and not making mention in the condition of any payment to be made by his heire, but for this, that the heir hath intereſt of right in the cõdition, &c And the intent was, but that the mony ſhould be paid at ſuch a day ſet, &c. and the Feoffee hath no more damage to be paid by the heirs, then though he were paid by the father, &c. for this cauſe if the heire pay the money, or tenderth the money at the day ſet, &c and the other refuſeth it, he may well enter. But if a ſtranger of his own head that hath no intereſt, &c. would tender and pay the money at the day ſet, then the Feoffee is not bound to receive it, &c

Alſo, it is to be had in mind, that in ſuch caſe where ſuch lawfull tender of the money is made, and the Feoffee refuſeth to receive it, wherefore the Feoffor or his heirs do enter, &c. then the Feoffee hath no remedy to have the money by the common law for this that it ſhall be counted his own folly that he refuſed the money when lawfull proffer was made of it unto him &c.

Alſo, if a Feoffment be made with ſuch condition, that if a Feoffee pay to the Feoffor at ſuch a day betweẽ them limited twenty pound, that then the Feoffee ſhall have the land to him and to his heires, and if he faile to pay the money

at the day, &c. that then it shall be lawfull to the feoffor, or to his heires to enter &c. And if after, before the day set the Feoffee selleth the Land to another, and thereof make a Feoffment unto him, in this case if the second Feoffee will tender the sum of money at the day set to the Feoffor, and the Feoffor refuseth it, &c. then hath the second Feoffee estate in the land clearely without condition: And the cause is, for that the second Feoffee hath interest in the condition for salvation of his tenancy. And in this case it seemeth that if the first Feoffee after such sale of Land will tender the money at the day set, &c. to the Feoffor, that shall be good enough for the salvation of the estate of the second Feoffee: for this, that the first Feoffee was privy to the condition, and so the tender of any of them is good enough &c.

Also if the feoffment be made upon condition, that if the Feoffor pay a certaine sum of money to the Feoffee: that then it shall be lawfull to the Feoffor and to his heires to enter &c. In this case if the Feoffor die before the day of payment, and the heire will tender to the Feoffor the money, such tender is voyd, for this that the time within which the tender ought to be made is past. For when the condition is, that if the Feoffor pay the money to the Feoffee, this is as much to say, that if the Feoffor during his life pay the money to the Feoffee, &c. And when the Feoffor dieth then the time of the tender is past. But otherwise it is where day of payment is limited, and the Feoffor dieth before the day, then may the heire tender the money, as is aforesaid, for this that the time of the tender was not past by the death of the Feoffor. Also it seemeth in such a

case

caſe where the Feoffor dieth before the day of payment if the Executors of the Feoffor tender the money to the Feoffee at the day of payment, the tender is good enough. And if the Feoffee refuſe this, the heires of the Feoffor may enter, &c. And the cauſe is for this, that the Executors repreſent the perſon of the Teſtator, &c.

And note well, that in all ſuch caſes of condition of payment of a certaine ſum in groſſe, touching lands or tenements, if lawfull tender be once refuſed, he that ought to pay the money is thereof quitted and clearely diſcharged for ever.

Alſo, if the Feoffee in Mortgage before the day of payment that ſhall be made unto him make his Executors and die, and his heire enter into the land as he ought. It ſeemeth in this caſe that the Feoffor ought to pay the money at the day ſet to the Executors, and not to the heire of the Feoffee, for this, that the money at the beginning belonged to the Feoffee in manner as a duty. And it ſhall be underſtood that the eſtate was made becauſe of borrowing of the money of the Feoffee, or becauſe of another duty, and for this the payment ſhall not be made to the heire of the Feoffee as it ſeemeth. But the words of the condition may be ſuch, that the payment ſhall be made unto the heire, as if the condition were that the Feoffor pay to the Feoffee or to his heires, ſuch a ſum at ſuch a day, &c. There after the death of the Feoffee (if he die before the day limited) then the payment ought to be made to the heire at the day ſet, &c.

Alſo in ſuch caſe of a feoffment in Mortgage, a queſtion hath been demanded, in what place the Feoffor is bound to tender the money to the

Feoffee at the day ſet, &c. And ſome have ſaid, that upon the land ſo holden in Mortgage, for this, that the condition is dependant upon the land, and they have ſaid, that if the Feoffor be ready upon the land, to pay the mony at the feaſt or day ſet, and the Feoffee be not at that time there, that then the Feoffor is excluded and diſcharged of payment of the money for this, that no default was in him. But it ſeemeth to ſome men that the Law is contrary and the default is in him: for he is bound to ſeeke the Feoffee, if he be then at that time in any manner of place within the Realme of England. As if a man be bound in an Obligation of twenty pound upon condition indorſed upon the Obligation, that if he pay to him to whom the Obligation is made, at ſuch a day ten pound, that then the Obligation of twenty pound ſhall loſe his force, and ſhall be holden for nought: In this caſe it behoveth him that made the Obligation to ſeeke him to whom the Obligation is made if he be within England, and at the day ſet, to tender him the ſaid ten pounds, &c. Or otherwiſe he forfeiteth the ſum of twenty pounds comprized within the Obligation, and ſo it ſeemeth in the other caſe &c. And though that ſome have ſaid, that the condition is dependant upon the land, yet this is not proved that the leſance of the condition to be performed ought to be made upon the land, &c. No more than if the condition were, that if the feoffor ſhould do at ſuch a day, &c. an eſpeciall corporall ſervice to the Feoffee, not naming the place where the corporall ſervice ſhould be done: In this caſe the Feoffor ought to do ſuch corporall ſervice at the day limited to the Feoffee in whatſoever

soever place in England that the Feoffee do, if he will have advantage of the condition, &c. And so it seemeth in that other case. And it seemeth to them, that it shall be more properly said, that the estate of the land is dependant upon the Condition, &c. then to say, that the condition is dependant upon the land: But inquire, &c.

But if a Feoffment in fee be made reserving to the Feoffor an annuall rent, and for default of payment a reentry, &c. In this case it needeth not to the tenant to tender the rent when it is behind, but only upon the land for this, that this is a rent going out of the land, which is rent seck. For if the Feoffor be once seised of his rent, and after he commeth upon the land, &c. and the rent is denied him, &c. he may have an Assise of Novel disseisin, for though he may enter, because of the condition broken, yet he may chuse, that is to say, to enter, or to have an Assise. And so is there diversity, as to the tender of the rent that is going out of the land, and of tender of another sum in grosse, which is not going out of the Land. And therefore it shall be sure and a good thing for them that will make such Feoffment in Mortgage, to put and set a speciall place where the money shall be paid. And the more speciall that is put, the better it is for the Feoffor. As if A. enfeoffed B. to have to him and to his heires upon such condition, that if A pay to B. in the feast of Saint Michael the Archangell next comming, in the Cathedrall Church of Saint Paul of London, within foure houres next before the houre of noone of the same feast at the rood left of the North deore within the same Church, or any other

certeine place within the same Church: that then it shall be lawfull to the aforesaid A. and to his heires to enter, &c. In such case he needeth not to seeke the Feoffee in any other place, but in the place comprised in the indenture, nor to be there more longer time than the time specified in the same Indenture, for to render or pay the money to the Feoffee.

Also in such case where the place of payment is limited, the Feoffee is not bound to receive the payment in none other place, but in the place so limited: But yet if he receive the payment in any other place, that is good enough, and as strong for the Feoffor, as if the receit had been in the place so limited, &c.

Also in this case of feoffment in Mortgage, if the Feoffor pay the Feoffee an horse, or a cup of silver or a ring of gold, or any other such thing in full satisfaction of the money, and the other this receiveth, this is good enough, and as strong as if he had received the sum of money, though the horse, or any of the other things be not the twentieth part worth in value of the sum of money, for this, that the other hath accepted in plaine and full satisfaction.

Also if a man enfeoffe another in fee upon condition, that he and his heires shall yeeld to a stranger and his heires a yearely rent of twenty shillings, and if he and his heires faile of payment of this, that then it shall be lawfull to the Feoffor and to his heires to enter, this is a good condition: And yet in this case, though such a yearely rent be called an annuall rent, this is not properly a rent: for if it shall be rent, it ought to be rent service, rent charge, or rent seek, and it is

none

none of them, for if the ſtranger were ſeiſed of this, and after it were to him denied, he ſhall never have an Aſſiſe of this, for this, that it iſſueth not out of any lands, and ſo the ſtranger hath no remedy, if any ſuch yearely payment be behind in this caſe, but that the Feoffor and his heires may enter, &c. and yet if the Feoffor and his heires enter for default of payment, then ſuch rent is gone for ever. And ſo ſuch rent is but a payment ſet to the tenant and to his heires, that if they will not pay this after the forme of the Indenture, that they ſhall loſe their land by the entry of the Feoffor or his heires, for default of payment. And in this caſe it ſeemeth that the Feoffee and his heires ought to ſeeke the ſtranger and his heires, if they be in England, becauſe that no place is limited where the payment ſhall be made, and becauſe that ſuch rent is not going out of any Land, &c.

And here note well two things, one is, that no rent that is properly ſaid rent, may be reſerved upon any feoffment, gift, or leaſe, but only to the Feoffor, or to the Donor, or to the leaſor, or to their heires, and in no manner may be reſerved to any ſtrange perſon: But if two Joyntenants make a leaſe by deed indented, reſerving to the one a certain yearly rent, that is good enough to him to whom the rent is reſerved, for this that he is privy to the leaſe, and not a ſtranger to this, &c. The ſecond thing is, that no entry or reentry (which is all one) may be reſerved nor given to any perſon, but only to the Feoffor, or to the Donor, or to the Leſſor, or to their heires, and ſuch entry may not be aliened nor granted to any perſon. For if a man let land to another

for terme of life by indenture, yeilding to the Lessor and to his heires certaine rent, and for default of payment a reentry, &c. if after the Lessor by a deed grant the reversion of the land to another in fee, and the tenant for terme of life attorneth, &c if the rent after be behind, the grantee of the reversion may distraine for the rent. for this, that the rent is incident to the reversion, but he may not enter into the land and put out the Tenant as the Lessor might, or his heires, if the reversion had been continued in them, &c. And in this case the entry is taken away at all times for the grantee of the reversion may not enter, Causa qua supra. See Stat 32 H.8.c.34. if the lease be by deed indented. And the Lessor or his heires may not enter, for if the Lessor may enter then he ought to be in his first estate, &c. and that may not be, for this, that he hath put from him the reversion &c.

Also, if there be Lord and tenant, and the tenant make such a lease for terme of life, yeilding to the Lessor and to his heires, such yearely rent, and for default of payment a reentry, &c. if after the Lessor die without heire, during the estate of the tenant for terme of life by which the reversion commeth to the Lord by way of Escheate, and after the rent of the tenant for terme of life is behind, the Lord may distraine the Tenant for the rent behind, but he may not enter into the land by force of the condition &c. for this, that he is not heire to the Feoffor, &c.

Also if land be granted to a man for terme of yeares, upon condition, that if he pay to the grantor within two yeares forty markes, that then he shall have the land to him and to his heires, &c.

heires &c. In this caſe if the grantee enter by force of the grant, & after he payeth to the grantor forty marks within the two yeares, yet he hath nothing in the land, but for terme of two yeares, for this, that no livery of ſeiſin was to him made at the beginning, for if he had had franktenement and fee in this caſe becauſe he hath performed the condition, then ſhould he have franktenement by force of the firſt grant where no Livery of ſeiſin was made thereof, which ſhould be againſt reaſon &c. But if the grantor had made livery of ſeiſin to the grantee by force of the grant, then hath the grantee the franktenement and the Fee upon the performance of the ſame condition.

Alſo, if lands be granted to a man for terme of five yeares, upon condition that he pay to the grantor within the firſt two yeares forty marks, that then he ſhall have fee, or elſe but for terme of five yeares and livery of ſeiſin is made to him by force of the grant: Now he hath fee ſimple conditionall &c. and if in this caſe the grantee pay not to the grantor the forty marks within the ſame two firſt yeares, then immediately after the ſame two yeares, the fee and the franktenement is and ſhall be adjudged to the grantor, for this, that the grantor may not after the two yeares incontinent enter upon the grantee, for this, that the grantee hath yet title by three yeares to have and occupy the Land by force of the ſame grant. And ſo for this, that the condition on part of the grantee is broken, and the grantor may not enter, the Law ſhall put the Fee and franktenement in the grantor: For if the grantee in this caſe make waſte,

then

then after the breaking of the condition, &c. and after the two yeares the grantor shall have his writ of waste, and this is a good proofe that the reversion is to him &c. But in such case of feoffments upon condition where the Feoffor may enter lawfully for the condition broken, &c. There the Feoffee hath the franktenement before the entry, &c.

Also, if a Feoffment be made upon such condition, that the Feoffee shall give the land to the Feoffor, and to the wife of the Feoffor, to have and to hold to them and to the heires of their two bodies ingendred, and for default of such issue, to remaine to the right heires of the Feoffor: In this case if the husband die living the wife, before estate in the taile made to him, then ought the Feoffee by the Law to make estate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to say, to let the land to the wife for terme of life without impeachment of waste, the remainder after her decease to the heires ingendred of the body of her husband and hers, and for default of such issue, the remainder to the right heires of the husband. And the cause why the Leale shall be made in this case to the woman sole without impeachment of waste, is for this, that the condition is, that the estate shall be made to the husband and his wife in taile. And if such estate had been made in the life of the husband, then after the death of her husband she hath estate in the taile sole, which estate is without impeachment of waste: and so it is reason, that if after a man may make estate to the intent of the condition, &c. that he shall make

it, &c.

it, &c thought that ſhe cannot have eſtate in the taile as ſhe might have had, if the gift in the taile had been made to the husband, and to her in the life of her husband, &c.

Alſo in this caſe if the husband and the wife had iſſue and die before the gift in the taile made unto them, &c. then ought the Feoffee to make eſtate to the iſſue, and to the heires of the father and mother ingendred, and for default of ſuch iſſue, &c. the remainder to the right heires of the husband, &c. And the ſame Law is in other caſes ſemblable. And if ſuch a Feoffor will not make ſuch eſtate when he is reaſonably required by them that ought to have eſtate by force of the condition, &c then may the Feoffor and his heirs enter. &c.

Alſo, if a Feoffment be made upon condition, that the Feoffee ſhall infeoff many men, to have and to hold, to them and to their heires for ever, and all they that ought to have eſtate, dye before any eſtate made unto them, then ought the Feoffee to make the eſtate to the heires of him that ſurviveth of them, to have and to hold to him, and to the heires of him that ſurviveth, &c.

Alſo if a Feoffment be made upon condition to enfeoffe another, or to give in the taile to another, &c. if the Feoffee before the performing of the condition enfeoffe a ſtrange perſon or make a leaſe for terme of life, then may the Feoffor and his heires enter &c. for this, that he hath diſabled himſelfe to performe the condition, inſomuch that he made eſtate to another, &c: In ſuch manner it is, if the Feoffee before the condition performed, let the ſame Land to a ſtranger for terme of yeares: In this caſe the Feoffor or his

his heires may enter, &c. for this that the Feoffee hath disabled himselfe to make estate of the tenements according to that that was in the tenements when the estate thereof was made unto him, for if he will make estate according to the Condition, &c. then may the Feoffee for terme of yeares enter and put out him to whom the estate is made, &c. and to occupy this during his terme. And many have said, that if such a feoffment be made to a man sole upon the same condition, and before that he hath performed the condition he taketh a wife, then the Feoffor or his heire may incontinent enter, for this, that if he have made estate according to the condition and after dieth, his wife shall be endowed. and may recover her dowry by a writ of Dower &c. And so by taking of a wife, the tenements be put in other plite then they were at the time of the Feoffment upon condition, for this, that no such woman was dowable, nor should be endowed by the Law, &c.

In the same manner it is, if the Feoffor charge the land by his deed of a rent charge before the performing of the condition, or be bound in a statute Staple, or statute Merchant, that in such cases, the Feoffor and his heires may enter, Causa qua supra. For whosoever commeth to the tenements by the feoffment of the Feoffee, then the tenements must be liable, and be put in execution by force of the statute aforesaid. But when the Feoffor or his heires, for the causes aforesaid have entred so as they ought as it seemeth, &c. Then all such things that before such entry may trouble or incumber the tenements so given upon condition, as touching the same

tenements

tenements be utterly defeated, &c.

Alſo, if a man make a deed of feoffment to another, and in the deed is no condition, &c. And when the Feoffor will make to him livery of ſeiſin by force of the ſame deed, he maketh livery of ſeiſin upon certaine conditions, &c. In this caſe nothing of the tenements paſſeth by the deed, for this, that the condition is not compriſed in the deed, and the feoffment is of ſuch force, as if no ſuch deed had been thereof made, &c.

Alſo if a feoffment be made upon ſuch condition, that the Feoffee ſhall not alien the land to any man, this condition is void, for this, that when a man is enfeoffed in Lands or Tenements, he hath power to alien them to ſome perſon by the Law. For if ſuch condition ſhould be good, then the condition puttith him out of all the power that the Law giveth, which ſhould be againſt reaſon, and for this ſuch condition is void. But if the condition be ſuch, that the Feoffee ſhall not alien to one ſuch, naming his name, or to any of his heires, or his iſſues, &c. or ſuch other like, the which condition taketh not away all the power of alienation of the feoffee, &c. then ſuch condition is good.

Alſo if tenements be given in the taile upon ſuch condition, that the tenant in the taile nor his heirs, &c ſhall not alien in fee, nor in taile, nor for terme of anothers life, but for their owne lives, &c ſuch alienation and condition is good: And the cauſe is for this, that when he maketh ſuch alienation and diſcontinuance he doth contrary to the intent, for which the Statute of Weſtminſter the ſecond was made, by which Statute the eſtates in the taile be ordained,

for

for it is proved by the words comprised in the ſame Eſtatute, that the intent of the making of the ſame eſtatute was, that the will of the donor in ſuch caſes ſhould be obſerved. And when tenant in the tatle maketh ſuch diſcontinuance, he doth the contrary to that &c. And alſo in eſtates in the tatle of any tenements, when the reverſion of the fee ſimple is in another perſon, when ſuch diſcontinuance is made, then the fee ſimple in the reverſion, or the fee ſimple in the remainder is diſcontinued, and for that that the tenant in the tatle ſhall do no ſuch thing againſt right, ſuch conditions are good, as is afore ſaid, &c.

Alſo, a man may give land in the tatle upon ſuch condition, that if the tenant in the tatle or his heires alien in fee, or in tatle, or for terme of anothers life, &c. And alſo, that all the iſſues comming of the tenant in the tatle be dead without iſſue, that then it ſhall be lawfull to the donor and to his heires to enter, &c. and by ſuch way the right of the tatle may be ſaved after ſuch diſcontinuance to the iſſue in the tatle if there be any, ſo that by way of entry of the donor or of his heires, the tatle ſhall not be defeated by ſuch condition, and yet if the tenant in the tatle in this caſe, or his heires make any diſcontinuance, or he in the reverſion or his heires after this that the tatle is determined for default of iſſue &c. may enter into the land by force of the ſame condition, and ſhall not be driven to ſue a writ of Formedon in the reverter

Alſo, a man may not plead in an action, that eſtate was made in fee, in the tatle, or for terme of life upon condition, but if he vouch a record thereof,

thereof, or ſhew a writing under ſeale, proving the ſame condition, for it is a common erudition and learning, that a man by pleading ſhall not defeat any eſtate of franktenement by force of any ſuch condition, unleſſe he ſhew the proofe of ſuch condition in writing, &c. except it be in ſome eſpeciall caſe: but of chattels and reals, as of a leaſe made for terme of yeares, or of grants of wards made by wardens in chivalry, and of ſuch other, &c. a man may plead that ſuch gifts or grants were made upon condition, &c. without ſhewing of any writing of condition. And in the ſame manner a man may do of gifts and grants of Chattels perſonals, and of contracts perſonals, &c.

Alſo, though that a man in ſome action may not plead a condition that toucheth and concerneth franktenement without ſhewing of writing thereof, as it is aforeſaid, yet a man may be holpen upon ſuch condition by the verdict of twelve men taken at large in Aſſiſe of diſſeiſin, or in ſome other Action where the Juſtices will take the verdict of the twelve Jurors at large. As put the caſe that a man ſeiſed of certain land in Fee, letteth the ſame Land for terme of life without deed, upon condition to yeeld to the Leſſor a certaine rent, and for default of payment a reentry &c. by force of which the Leſſee is ſeiſed as of a franktenement, and after the rent is behind by which the Leſſor entreth into the land, and after the Leſſee arraigneth an Aſſiſe of Novel diſſeiſin of the land againſt the Leſſor, the which pleadeth that he doth no wrong ne no diſſeiſin, and upon this the Aſſiſe is taken.

In this caſe the Recognitors of the Aſſiſe may

may say and yeeld to the Justices their verdict at large upon all the matter, as to say, that the defendant was seised, and so seised, let the same Land to the plaintife for terme of his life, to yeeld to the Lessor such annuall rent payable at such a feast, and upon such condition, that if the rent be behind at any such feast that it ought to be payed that then it shall be lawfull to the Lessor to enter &c by force of which Lease the plaintife was seised of his demesne as of franktenement, and after the rent was behind at such a feast, in such a yeare, &c for which the Lessor entred into the land upon the possession of the Lessee, and prayeth the discretion of the Justices, if this be a disseisin done by the plaintife or not. And then for this that it appeareth to the Justices, that this was no disseisin done to the plaintife, insomuch that, that the entry of the Lessor was lawfull upon him, the Justices ought to give judgement that the plaintife shall take nothing by his writ of Assise. And so in such case the Lessor shall be holpen, and yet no writting was ever made of the condition, for as well as the Jurors may have knowledge of the lease, in the same manner may they have knowledge of the condition rehearsed in the lease In the same manner it is of a feoffment in fee or a gift in the taile upon condition though never writing were made thereof, &c. And as it is said of a verdict at large in Assise, in the same manner it is of a writ of Entrie founded upon disseisin, and in all other actions where the Justices will take a verdict at large, there where the verdict at large is made, the nature of the matter is put in the issue, Also in such case where the Enquest may

say

ſay their verdict at large, if they will take upon them the knowledge of the Law upon the matter, they may ſay their verdict generall, as it is put in their charge, as in caſe aforeſaid; they may well ſay that the Lord diſſeiſed not the Leſſee if they will &c.

Alſo, in the ſame caſe, if the caſe were ſuch, that after this that the Lord hath entred for default of payment &c. that the Leſſee hath entred upon the Lord, and him diſſeiſed, In this caſe if the Lord arraigneth an Aſſiſe againſt the leſſee, the leſſee may bar him of his aſſiſe, for he may plead againſt him in bar, how the lord that is plaintike made a leaſe to the defendant for terme of life, ſaving the reverſion to the plaintike, the which is a good plea in bar, inſomuch that he knowledgeth the reverſion to be to the plaintike, and in this caſe he hath no matter to help him, but the condition made upon the leaſe, and that he may not plead, for that he hath no writting, and inſomuch that he may not anſwer to the bar, he ſhall be barred. And ſo in this caſe ye may ſee, that a man is ſeiſed and he ſhall have Aſſiſe, and yet if the leſſee be plaintike, and the lord defendant he ſhall bar the leſſee by verdict of the aſſiſe. But in this caſe where the leſſee is defendant, if he will not plead the ſaid plea in bar, but plead no wrong ne diſſeiſin, then the lord ſhall recover by Aſſiſe Cauſa qua ſupra.

And becauſe ſuch conditions be moſt commonly put and ſpecified in deeds indented, ſome little thing ſhall be ſaid here (to thee my ſon) of indentures, or of a deed Poll containing conditions. And it is to wit, that if the indenture be dipartite, or tripartite, or quadripartite, all the

parts of the Indenture be but one deed in the Law and every part of the Indenture is of himſelfe as of great force and effect, as all the parts together. And the making of Indentures is in two manners: One is to make them in the third perſon, another manner is to make them in the firſt perſon. The making of the third perſon is as in ſuch forme. This Indenture made between A of B. of the one part, and C of D. of the other part, witneſſeth, that the aforeſaid A. of B. hath given and granted, and by this preſent deed indented, hath confirmed to the aforeſaid C of D. ſuch land, To have, &c. upon the condition, &c. In witneſſe whereof the parties beforeſaid interchangeably have put to their ſeales: Or elſe thus, In witneſſe whereof to the one part of this Indenture remaining with the ſaid C. of D. the foreſaid A. of B hath put to his ſeale, and to the other part of the ſaid Indenture remaining with the ſaid A. of B. the ſaid C. of D. hath put to his ſeale. given, &c. Such indentures are called indentures made in the third perſon, for this, that the words be in the third perſon, and ſuch forme of indenture is the more ſure making, for that it is more commonly uſed. The making of indentures in the firſt perſon is of ſuch forme. To all true Chriſtian people to whom this preſent writing indented ſhall come, A of B. greeting in our Lord everlaſting. Know ye me to have given and granted, and by this my preſent deed indented to have confirmed to C. of D. ſuch land, &c Or elſe thus: Know all men that be preſent, and them that be to come, that I A. of B. have given and granted and by this my preſent deed indented have confirmed to

C. of

C. of D such land, &c to have, &c. upon the condition following: In witneſſe whereof as well I the said B of B. as the aforesaid C. of D. to theſe Indentures interchangeably have put to our seales; or else thus: In witneſſe whereof to one part of this Indenture I have put to my seale, and to the other part of the same Indenture the foresaid C of D. hath put to his seal, &c.

And it seemeth that such an indenture made in the first person, is as good in Law as the Indenture made in the third person, when both parties have thereto put their seales, for in the Indenture made in the third person, or in the first person, if mention be made that the grantor hath set his seale only, and not the grantee then is the Indenture only the deed of the grantor. But where mention is made that the grantee hath set his Seale to the Indenture, &c. then is the Indenture as well the deed of the grantor, as the deed of the grantee, and thus it is the deed of both, and also every part of the Indenture is the deed of both parties in such case, &c.

Also if eſtate be made by Indenture to a man for terme of his life, the remainder to another in Fee upon condition, &c. and if the Tenant term of life hath set his seale to one part of the Indenture, and after dieth, and he in the remainder, &c. entreth by force of his remainder, in this case he is holden to performe all the conditions compriſed within the Indenture, as the tenant for terme of life ought to do in his life, and yet he in the remainder never sealed any part of the Indenture: But the cause is, that insomuch that he entreth and agreeth to have the land by force of the Indenture, he is holden to per-

forme the condition within the Indenture, if he will have the Land, &c.

Also if a Feoffment be made by deed Poll upon condition, &c. And for this that the condition is not performed, the Feoffor entreth and happeth the possession of the deed Poll. if the feoffee bring an action of that entry against the feoffor, it hath been a question, if the feoffor may plead the Condition, &c. by the deed Poll against the feoffee: And some have said nay, insomuch that it seemeth unto them, that a deed Poll, and the property of the same deed appertaineth to him to whom the deed is made, and not to him that made the deed, and insomuch that such a deed appertaineth not to the Feoffor, it seemeth to them that he may not plead this deed, &c. And others have said the contrary, and have shewed divers causes One is, if the case be such, that in the action between them the feoffee plead the same deed, and shew this to the Court: In this case insomuch that the deed is in the Court, the feoffor may shew in the Court, how in the deed be divers conditions to be performed of the part of the feoffee, and for this that they be not performed, he entred, &c. and thereto he shall be received: by the same reason when the feoffor hath the deed in hand, and sheweth it to the Court, he shall be well received to plead of this, &c. and namely when the feoffor is privy to the deed, for he ought to be privy to the deed when he made the deed.

Also. if two men make or do a trespasse to another, the which releaseth to one of them by his deed all actions personalls, and notwithstanding he sueth an action of trespasse against the other, the defendant may well shew that the trespasse

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was done by him and another his fellow, and that the plaintife by the deed that he ſhewed forth releaſeth to his fellow all actions perſonals, and yet ſuch deed appertaineth to his fellow, and not unto him, but for this, that he may have advantage by the deed, if he will ſhew the deed to the Court, he may well plead. &c. Therefore by the ſame reaſon in the other caſe, when the feoffor ought to have advantage by the condition compriſed within the deed Poll.

Alſo, if the Feoffee gave or granted the deed Poll to the Feoffor, ſuch grant ſhall be good, and then the deed, and the property of the deed appertaineth to the Feoffor. And when the Feoffor hath the deed in hand, & pleadeth it to the Court, it ſhall be rather underſtood that he came to the deed by a lawfull meane than by a tortious meane. And ſo it ſeemeth that he may well plead ſuch a deed Poll, that comprehendeth condition, &c. if he have the deed in hand, &c. Ideo ſemper quære de dubiis, quia per rationes pervenitur ad legiē rationem.

Eſtates that men have upon Condition in the Law, be ſuch eſtates that have Condition in the Law annexed to them, though it be not ſpecified in writing, ſo as a man grant by his deed to another the office of a Parkerſhip of a Parke, to have and to occupy the ſame office for terme of his life, the eſtate that he hath in the office, is upon condition in the Law, that is to ſay, that the Parker well and truly ſhall keepe the parke and do that that to the office appertaineth to do: or otherwiſe that it ſhall be lawfull to the grantor and to his heires to put him out, and to grant that to another if he will, &c. And

such condition as is understood by the Law to be annexed to something, is as strong as if the Condition were set or put in writing. In the same manner it is of grants of offices of Stewards, Constables, Bedles, Bailifes and other officers. But if such office be granted to a man to have and to occupy by him or by his deputy, then if the office be occupied by him or by his deputy as it ought by the Law to be occupied this sufficeth for him, or else the grant or his heires may put him out as is aforesaid.

Also, estates of lands or tenements may be upon condition in the Law, though that upon the estate made, there was no rehearsall made of the condition: As put the case that a lease be made to the husband and his wife, to have and to hold to them during the coverture between them, in this case they have estate for terme of their two lives upon condition in the law, that is to say if one of them die, or if divorce be made between them, that then it shall be lawfull to the Lessor and his heires to enter, &c. and that they have estate for terme of their two lives, it is proved thus. Every man that hath estate of franktenement in any lands or tenements, either he hath estate in fee, or in fee taile, or for terme of life, or for terme of anothers life, and yet by such lease they have Franktenement, but they have not by the grant, fee, nor taile, nor for terme of anothers life, Ergo they have estate for terme of their two lives, but this is upon condition in the Law in forme aforesaid. And in this case if they make waste, the Lessor shall have against them a writ of waste, supposing by his writ Quod tenent ad terminum vitæ, &c. but in his

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plea he ſhall declare how and in what manner the leaſe was made. In the ſame manner it is, if an Abbot make a leaſe to a man, to have and to hold during the time the Leſſor is Abbot: In this caſe the Leſſee hath eſtate for terme of his own life, but this is upon condition in Law that is to ſay, if the Abbot die, or reſigne, or be depoſed, it ſhall be lawfull to his ſucceſſors to enter, &c.

Alſo, a man may ſee in the Book of Aſſiſes, An. 38. E. 3. a plea of aſſiſe in this forme that inſueth. Aſſile of Novel diſſeiſin was ſometime brought againſt one A. that pleadeth to the Aſſiſe, and was found by verdict that the Anceſtor of the plaintife deviſed the tenements to be ſold by the defendant that was his executor to make diſtribution of the money for his ſoule. And it was found, that a man after the death of the teſtator tendred him a certaine ſum of money for the tenements but not to the value, and that the executor after held the Tenements in his owne hand by two yeares, to the intent to have ſold the tenements more dearer to ſome other: And it was found that he had all the while after taken the profits of the tenements to his own uſe, without any thing doing for the ſoule of the dead. Mombray, the executor in ſuch caſe is holden by the Law to make ſuch ſale as ſone as he may after the death of the teſtator, and it is found that he refuſed to make the ſale, and ſo the default was in him: And alſo by force of the deviſe he was holden to have put all the profits of the ſaid tenements to the uſe of the dead, and it is found that he hath taken them to his own uſe, and ſo another default is in him, wherefore

it was adjudged that the plaintike ſhould recover, &c. And ſo it appeareth in the ſaid judgement, that by force of the ſaid devtſe the executor had none eſtate or power in the tenements, but upon condition in the Law, &c. And in ſuch caſes it needeth not to have ſhewed any deed, rehearſing the condition &c. Ex paucis dictis intendere plurima poſſis. More ſhall be ſaid of conditions in the chapter of deſcents that take away entry, and in the chapter of Releaſes, and in the chapter of Diſcontinuance.

Deſcents.

DEſcents that take away entries be in two manners, that is to ſay, where the deſcent is in Fee or in Fee taile. Deſcent in fee that taketh away entry is, if a man ſeiſed of certaine lands or tenements, is diſſeiſed, and the diſſeiſor hath iſſue and dieth of ſuch eſtate ſeiſed: Now the tenements deſcend to the iſſue of the diſſeiſor by courſe of the Law, as heire unto him. And for this that the Law putteth the lands or tenements upon the iſſue, and the iſſue commeth to the tenements by courſe of the Law, and not of his own deed, the entry of the diſſeiſee is taken away, and he is thereof put to his writ of Entre upon diſſeiſin againſt the heire of the diſſeiſor to recover the land.

Deſcent in the taile that taketh away entry is, if a man be diſſeiſed and the diſſeiſor giveth the ſame Land to another in the taile, and the tenant in the taile hath iſſue and dieth ſeiſed of ſuch eſtate and the iſſue entreth, in this caſe the entry of the diſſeiſee is taken away, and he is

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put to ſue againſt the iſſue of the tenant in the taile, a writ of Entry upon diſſeiſin, &c.

And note well, that in ſuch deſcents that take away entries, it behoveth that a man die ſeiſed in his demeſne as of fee, or of fee taile, for dying ſeiſed for terme of life, or for terme of anothers life, ſhall never take away the entry, &c.

Alſo, a deſcent of reverſion, or of remainder, ſhall never take away entry, &c. ſo that in ſuch caſes that take away entries by force of deſcents, it behoveth that he that died ſeiſed have fee and franktenement at the time of his dying, or elſe ſuch deſcent taketh not away entry.

Alſo, as it is ſaid of deſcents that deſcend to the iſſue of him that dieth ſeiſed, &c. the ſame Law is where they have no iſſue, but the tenements deſcend to the brother, or the ſiſter, or to the uncle, or to ſome other coſin of him that dieth ſeiſed &c.

Alſo, if there be Lord and Tenant, and the Tenant be diſſeiſed, and the diſſeiſor alieneth to another in fee, and the alienee dieth without heire, and the Lord entreth as in his Eſcheate: In this caſe the diſſeiſee may enter upon the Lord for this, that the Lord commeth not to the land by deſcent, but by eſcheat.

Alſo, if a man ſeiſed of certaine land in fee, or in fee taile, upon condition to yeeld certain rent, or upon other condition though that ſuch tenant ſeiſed in fee, or in fee taile, die ſeiſed, yet if the condition be broken in their life, or after their deceaſe, &c. this taketh not away the entry of the feoffor, nor of the donor, or of their heires, for this that the tenancy is charged with the condition, and the eſtate of the tenancy is conditionall

tionall in whose hands soever the tenancy shall come, &c.

Also, if such a tenant upon condition be disseised, and the disseisor die thereof seised, and the land descendeth to the heire of the disseisor, now the entry of the tenant upon condition that was disseised is taken away, but if the condition be broken, &c. then may the feoffor or the donor that made the estate or their heires enter, &c. Causa qua supra.

Also, if a disseisor die seised, and his heire enter, &c. the which endoweth the wife of the disseisor of the third part of the tenements: in this case, as to the third that is assigned to the wife in dower, incontinent anon after that the wife entreth and hath possession of the same third part, the disseisee may lawfully enter upon the possession of the wife in the same third part. And the cause is for this, that when the wife hath her dower she shall be adjudged in, rather immediately by her husband than by the heire, and so as to the freehold of the same third part, the descent is forfeited. And so ye may see how before the dowment the disseisee might not enter into any part &c. and after the dowment he may enter upon the wife, and yet he may not enter upon the other two parts that the heire of the disseisor hath by descent &c.

Also, if a woman be seised of Land in Fee, whereof I have right and title to enter, if the woman take an Husband and have issue between them, and after the wife dieth seised, and after the husband dieth, and the issue entreth, &c. in this case I may enter upon the possession of the issue, for this, that the issue commeth not to

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the tenements immediately by deſcent after the death of his mother. Añ. 9 H 7 fol. 24 it is holden contrary.

Alſo if a diſſeiſor, in fee, hath his father, and the father entreth and dieth of ſuch eſtate ſeiſed, by which the tenements deſcend to the diſſeiſor, as to the ſon and heire, &c. In this caſe the diſſeiſee may well enter upon the diſſeiſor, notwithſtanding the deſcent, for this, that as to the diſſeiſin, the diſſeiſor ſhall be adjudged in but as the diſſeiſor notwithſtanding the deſcent.

Alſo, if a man ſeiſed of certaine Land in his demeane as of fee, hath iſſue two ſons and dieth, and the younger ſon entreth by abatement in the Land, the which hath iſſue, and of this dieth ſeiſed, and the tenements deſcend to the iſſue, and the iſſue entreth into the Land: In this caſe the elder ſon or his heires may enter by the Law upon the iſſue of the younger ſon, notwithſtanding the deſcent, for this, that when the younger ſon abated in the land after the death of his father, before any entry of the elder, the law entendeth that he entreth in claiming as heire unto his father, and for this, that the elder brother claimeth by the ſame title, that is to ſay, as heire unto his father, he and his heires may enter upon the iſſue of the younger brother, notwithſtanding the deſcent, &c. for this, that they claime by one ſelfe title. And in the ſame manner it ſhall be if there be many deſcents from one iſſue to another iſſue of the younger ſon, &c. But in ſuch caſe if the father were ſeiſed of certaine land in fee, and hath iſſue two ſons and dieth, and the elder ſon entreth and is ſeiſed, &c. And after the younger ſon diſſeiſeth him, by which diſſeiſin he is ſeiſed

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of Fee, and hath issue, and of such estate dieth seised, then the elder brother may not enter, but is put to his writ of Entre upon disseisin for to recover the land. And the cause is for this, that the younger brother commeth to the tenements by a wrong disseisin made unto his elder brother, and for that wrong the Law may not intend that he claimeth as heire to his father, no more than if a strange person had disseised the elder brother that never had any title, &c. And so may ye see the diversity, where the younger brother entreth after the death of his father, before any entry made by the elder brother in such case, &c. and where the elder brother entreth after the death of his father, and is disseised by the younger brother &c. In the same manner if a man seised of certaine land in Fee, hath issue two daughters, and dieth, and the elder daughter entreth in the land claiming all the land to her, and thereof only taketh the profits, and hath issue and dieth seised by which her issue entreth, which issue hath issue and dieth seised and the second issue entreth, &c. & hereof, yet the younger daughter and her issue, as to the halfe may enter upon every issue of the elder daughter, notwithstanding such descent, for this, that they claime by one selfe title, &c. But in such case if both two sisters come into the Land to enter after the death of their father, and there of were seised, and after the elder sister thereof disseised the younger sister of that that to her belonged, and thereof is seised in fee, and hath issue, and of such estate dieth seised, by which the tenements descend to the issue of the elder sister, then the younger sister or his heires may not enter, &c. Causa qua supra.

Also,

Alſo, if a man ſeiſed of certaine Land hath iſſue two ſons, and the elder brother is baſtard, and the younger brother Mulier, and the father dieth, and the baſtard entreth and claimeth as heire unto his father, and occupieth the land all his life without any entry made upon him by the Mulier, and the baſtard hath iſſue and dieth of ſuch eſtate ſeiſed in fee, and the land deſcendeth to his iſſue, and his iſſue entreth, &c. in this caſe the Mulier is without remedy, for he may not enter, nor he ſhall have no action for to recover the Land, for this, that it is an ancient Law in ſuch caſe uſed. But it hath been an opinion of ſome men, that that ſhall be underſtood where the Father hath a ſon a baſtard by a woman, and after he weddeth the ſame woman, and after the eſpouſals he hath iſſue by the ſame woman a ſon or a daughter Mulier, and the father dyeth, &c. if ſuch a Baſtard enter, &c. and hath iſſue, and dieth ſeiſed, &c. Then ſhall the iſſue of ſuch a Baſtard have the land clearely to him, as it is afore ſaid, &c. and not any other Baſtard borne of the mother that was not eſpouſed to his Father, and this is good and reaſonable opinion: For ſuch a Baſtard borne before the eſpouſals ſolemnized between his father and his mother, by the Law of the holy Church is Mulier, though that by the Law of the Land he is a Baſtard borne, and ſo he hath colour of entry as heire to his Father, for this, that he is by one Law Mulier, that is to ſay by the Law of holy Church But otherwiſe it is of a Baſtard that hath no manner of colour to enter as heire, inſomuch that he may not in no Law be ſaid Mulier, &c. For ſuch a Baſtard is ſaid

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Quasi nullius filius. But in such case aforesaid, where the bastard entreth after the death of his father, and the Mulier putteth him out, and after the Bastard disseiseth the Mulier, and hath issue, and dieth seised, and the issue entreth, then the Mulier may have a writ of Entre upon disseisin against the issue of the Bastard, and recover the land, &c. And so may ye see the diversity where such a Bastard continueth his possession all his life without any interruption, and where the Mulier entreth and interrupted the possession of such a bastard.

Also if a child within age have title and cause to enter into any Lands or tenements upon another that is seised in fee, or in fee taile of the same lands or tenements, if such a man that is so seised die of such estate so seised, and the tenements descend to his issue, during the time that the child is within age, such descent shall not toll the entry of the child, but he may enter upon the issue that is in by descent, &c. for this, that no laches shall be adjudged in a child within age in such case, &c.

Also if the husband and his wife, as in right of the wife have title and right to enter in the tenements that another hath in fee, or in fee taile, and such a tenant dieth seised, &c. In such case the entry of the husband is taken away upon the heire that is in by descent. But if the husband die, then the wife may well enter upon the issue which is in by descent, for this that the laches of the husband shall not turn to the wife and to her heires, in prejudice nor in damage in such case, but that the wife and her heires may well enter where such descent is during the coverture, &c.

Also,

Alſo, if a man that is not of whole mind, that is to ſay in Latine, Qui non eſt compos mentis, hath cauſe to enter in any ſuch Tenements, if ſuch deſcent ut ſupra be had in his life during the time that he was out of his mind, and after dye, his heires may well enter upon him that is in deſcent. And in this may ye ſee a caſe that the heire may enter, and yet his Anceſtor that had the ſame title may not enter, for he that was out of his mind at the time of ſuch deſcent, if he will enter after ſuch a deſcent, if an action upon this be ſued againſt him, he hath nothing for him to plead, or to help him but to ſay that he was out of mind at the time of ſuch deſcent &c. And he ſhall not be received to ſay this, for this, that no man of full age ſhall be received in any plea by the Law to diſable his own perſon. But the heire may well diſable the perſon of his Anceſtor for advantage of the heire in ſuch caſe, for this, that no laches may be adjudged by the Law in him that hath no diſcretion in ſuch caſe. And if ſuch a man out of his mind make a feoffment &c. he may not enter, nor have a Writ called, Dum non fuit compos mentis, &c. Cauſa qua ſupra. But after his death his heire may well enter, or have the ſame Writ, Dum non fuit compos mentis at his election, &c.

Alſo, if I be diſſeiſed by a child within age that alieneth to another in fee, and the alienee dieth ſeiſed, and the tenements deſcend to his heire the child being within age, my entry is taken away. But if the child within age enter upon the heire that is in by deſcent, as he well may, for this, that the diſcent was during his nonage, then I may well enter upon the diſſeiſor, for this,

this, that by his entry he hath defeated and annulled the descent.

And in the same manner it is, where I am disseised, and the disseisor maketh a feoffment in fee upon condition, &c. and the feoffee dieth of such estate seised, &c. I may not enter upon the heire of the feoffee: But if the condition be broken, so that by such cause the feoffor entreth upon the heir, now may I well enter, for this, that when the feoffor or his heires enter for the condition broken the descent is utterly defeated.

Also, if I be disseised, and the disseisor hath issue and entreth into Religion by force of which the Lands descend to his issue, in this case I may well enter upon the issue, and yet there was a descent: But for this, that such descent commeth to the issue by the Fathers deed, that is to say, for this, that he entred into Religion, &c. and his descent commeth not to him by the deed of God, that is to say, by death, &c. my entry is congeable and lawfull, for if I arraigne an Assise of Novel disseisin against my disseisor, though he after enter into religion, this shall not abate my writ: but my writ this notwithstanding shall abide in his force and strength. and my recovery against him shall be good By the same reason the discent that came to his issue by his own deed may not put me from my entry, &c.

Also if I let to a man certaine Lands for terme of twenty yeares, and another disseiseth me and putteth out the termor, and dieth seised, and the Tenements descend upon his heire: I may not enter, and yet the Lesse for terme of yeares may well enter for this, that by his entry he putteth not out the heire that is in by descent from

from the Franktenement that unto him descended, but only claimeth to have the tenements for terme of yeares. the which is no expulling of the franktenement of the heir that is in by descent. But otherwise it is where my tenant for terme of life is disseised, &c. Causa qua supra.

Also, it is said, that if a man be seised of tenements in fee by occupation in time of war, and dieth thereof seised in time of war and the tenements descend to his heire, such descent putteth out no man of his entry. And of this a man may see a plea in a writ of Ayel, Anno 7 E. 2.

Also, that no dying seised (where all the tenements come to another by succession) shall take away the entry of any person, &c. For of Priests, Abbots, Priors, Deanes, or Parsons of Churches, &c. though that there were twenty successors, this putteth no man from his entry, &c. More shall be said of descents in the chapter of Continuall claime, &c. See the Statute 32. H. 8. c. 33.

Continuall claime.

COntinuall claime is, where a man hath right and title to enter in any lands or tenements whereof another is seised in fee, or in fee taile, if he that hath title to enter make continuall claime to the lands and tenements, before the dying seised of him that holdeth the tenements: Then though such a tenant dye thereof seised, and the lands and tenements descend to his heir, yet may he that hath made such claime, or his heires, enter into the lands and tenements descended, because of the continuall claime made,

notwithstanding such descent. If in case a man be disseised, and the disseisee maketh continuall claime to the tenements in the life of the disseisor, though the disseisor die seised in fee, and the land descendeth unto his heires, yet may the disseisee enter upon the possession of the heire, notwithstanding such descent.

In the same manner it is, if tenant for terme of life alien in fee, he in the reversion, or he in the remainder may enter upon the alienee. And if such alienee die seised of such estate without continuall claime made to the tenements before the dying seised of the alienee, and the tenements become of the dying seised of the alienee descend unto the heire of the alienee, then may not he in the reversion, nor he in the remainder enter. But if he in the reversion, or he in the remainder that hath cause to enter upon the alienee made continuall claime to the tenements before the dying seised of the alienee, then such a man may enter after the death of the alienee, as well as he might in his life &c.

Also, if Lands be let unto a man for terme of his life, the remainder unto another for terme of life, the remainder unto the third in fee, if the tenant for terme of life alien to another in fee, and he in the remainder for terme of life maketh continuall claime unto the land before the dying seised of the alienee, and after the alienee dieth &c. and after he in the remainder for terme of life dieth before any entry made by him: In this case he in the remainder in fee may enter upon the heire of the alienee, because of continuall claime made by him that had the remainder for terme of life for this, that such right that he hath to enter

shall go and remaine to him in the remainder af=
ter him, insomuch that he in the remainder in fee
may not enter upon the alienee in fee during the
life of him in the remainder for terme of life, and
because he might not make continuall claime, for
none may make continuall claime but when he
hath title to enter. But it is to be shewed to thee
my child, how and in what manner continuall
claime shall be made: and to learne this three
things there be to be understood. The first thing
is, if a man have cause to have any lands or tene=
ments in divers townes within one Shire, if he
enter in any parcell of the lands or tenements
that he in one towne, in the name of all the lands
or tenements to which he hath right to enter
within all the townes in the same Shire, by such
entry he hath as good possession and seisin of such
lands and tenements whereof he hath title to
enter, as if he had entred into every parcell, and
this seemeth great reason, for if a man will in=
feoffe another without deed, of certaine lands or
tenements that he hath in many townes within
one shire, and he will deliver seisin to the feoffee of
parcell of the tenements within one towne in the
name of all the lands and tenements that he hath
in the same towne, and in all the other townes, &c.
all the said tenements, &c shall passe by force of
the said livery of seisin to him to whom such
feoffment in such manner is made. And yet he
to whom such livery of seisin is made hath no
right to all the lands and tenements in all the
townes, but by reason of the livery of seisin made
of parcell of the lands or tenements in one
towne, à multo fortiori, it seemeth good reason that
when a man hath title to enter into lands or

tenements in divers townes within one shire before entry by him made, that by the entry of him made in parcell of the tenements in one town, in the name of all the lands and tenements to the which he hath title to enter within the same shire, this is a seisin of all in him, and by such entry he hath possession and seisin in deed, as if he had entred into every parcel, &c.

The second is to understand, that if a man hath title to enter into any lands or tenements, if he dare not enter into the same lands or tenements, nor in any parcell thereof for doubt of beating or for doubt of maiming, or for doubt of both, if he approach as nigh the tenements as he dare for such doubt, and claime by words the tenements to be his, incontinent by such claime he hath a possession and seisin in the tenements, as well as if he had entred indeed, though he had never possession or seisin of the same lands or tenements before the said claime. And that the law is such it is well proved by a plea of an assise in the book of Assises, An. 38. E. 3: P. 23. the tenor of which ensueth in this forme.

In the County of Dorset before the Justices it was found by verdict of Assise, that the plaintife which had right by descent of heritage, to have the tenements put in plaint at the time of the death of his ancestor, which was dwelling in the town where the tenements were, and by word claimeth the tenements among his neighbours, but for doubt of death he durst not approach unto the tenements, bringeth an assise, and upon the matter found, it was awarded that he should recover.

The third thing is, to understand within what

what time, and by what time the claime that is ſaid continuall claime ſhall ſerue & help him that made the claime and his heire. And as to this it is to wit, that he that hath title to enter, when he will make his claime, if he dare approach unto the land, then it behoueth him to go unto the land, or to parcell of it, and make his claime And if he dare not approach unto the land for dread of beating, maiming, or death, then it behoueth him to go, and to approach as nigh as he dare toward the land, or parcell therof and make his claime. And if his aduerſary that occupieth the land die ſeiſed in fee, or in fee taile, within a yeare and a day after ſuch claime made, by which the tenements deſcend unto his ſon, as heire unto him, yet may he that made the claime, enter upon the poſſeſſion of the heire. But in this caſe after the yeare and the day that ſuch claime was made, if none other claime be made, if the father then die ſeiſed the morrow after the yeare and the day, or at another day after, &c. then may not he that made the claime enter. And therefore if he that made the claime will be ſure alway that his entry ſhall not be taken away by ſuch deſcent, it behoueth him within the yeare & the day after the firſt claime, to make another claime, in the forme aforeſaid: And within the yeare and the day after the ſecond claime, to make the third claime in the ſame manner: & within the yeare & the day after the third claime to make another claime, &c. that is to ſay, to make another claime within euery yeare & day next after euery claime made during the life of his aduerſary, and then at what time that his aduerſary dye, his entry ſhall not be taken away by deſcent. And ſuch

claime made in such manner, is most commonly taken and called continuall claime of him that made the claime. But yet in case aforesaid, when his adversary dieth within the yeare and the day next after the first claime, this is in the Law a continuall claime, insomuch that his adversary died within the yeare and day after the same claime, for it is no need for him that made the claime to make any other claime, but at what time he will within the same yeare and the day, &c. Also if his adversary be disseised within the yeare and day after the claime, and the disseisor dieth thereof seised within the yeare and the day, &c. This dying seised shall not hurt him that made the claime, but that he may enter &c. For whosoever he be that died seised within the yeare and the day after such claime, that shall not hurt him that made the claime, but that he may enter though there were many dyings seised, and many descents within the yeare and the day, &c.

Also if a man be disseised, and the disseisor die seised within the years and the day next after the disseisin done, whereby the tenements descend to his heire, in this case the entry of the disseisee is taken away, for the yeare and the day that should help the disseisee in such case, &c. shall not be taken from the time of the title of entry growen unto him, but only from the time of the claime by him made in manner aforesaid: and for that cause it shall be good for such a disseisee for to make his claime, &c. in as short time as he may after the disseisin, &c.

Also, if such a disseisor occupy the land by forty yeares without any claime made by the disseisee, &c. and the disseisee by little space before the death

death of the diſſeiſor make claime in the forme aforeſaid, if ſo it fortune that within a yeare and a day after ſuch claime the diſſeiſor die diſſeiſed, &c. the entry of the diſſeiſee is congeable, and for this it ſhall be good for ſuch a man that made no claime that hath title to enter, &c. when he heareth that his adverſary lieth ſick to make his claime, &c.

Alſo, as it is ſaid in the caſes put before, where a man hath title to enter becauſe of a diſſeiſin, &c. The ſame Law is where a man hath right to enter becauſe of any other title, &c.

Alſo in the ſaid Preſidents may ye know my child two things. One is, where a man hath title to enter upon any tenant in taile, if he make any ſuch claime unto the land, &c then is the ſtate of the taile defeated, for that claime is as an entry made by him, and is of the ſame effect in the Law, as if he were upon the ſame Tenements, and had entred in the ſame tenements, as is aforeſaid. And then when the tenant in taile immediately after ſuch claime continueth his occupation in the tenements, this is a diſſeiſin made of the ſame tenements unto him that made the claime, Et ſic per conſequens, the tenant then hath Fee ſimple.

The ſecond thing is that as oft as he that hath right to enter maketh ſuch claime, and this notwithſtanding his adverſary continueth his occupation, &c. ſo oft the adverſary doth wrong and diſſeiſin to him that made the claime. And for this cauſe ſo oft may he that made the ſame claime for every ſuch wrong and diſſeiſin made unto him, have a writ of treſpaſſe, Quare clauſum ſuum fregit, &c. to recover his damages, &c.

or he may have a writ upon the statute of King Richard the second, made the fifth yeare of his raigne, supposing by his writ that his adversary hath entred into the lands or tenements of him that made the claime, where his entry was not given by the Law, &c. and by such action he shall recover his damages, &c. And if the case be such, that the adversary occupy the tenements with force and armes, or with a multitude of people at the time of such claime, &c. then may he that made claime, for every such time have a writ of forcible entry, and recover his trebble damages.

Also, here it is to see, if the servant of a man that hath title of entry, may by the commandement of his master make continuall claime for his Master in his name, and it seemeth that in some cases he might do this, for if he by his commandement come to any parcell of the land, and there maketh claime, &c. in the name of his Master, this claime is good for his Master, for this, that he hath done all that it behoveth his Master to do in such case, &c.

Also, if a Master say unto his servant that he dare not go into the land, nor into any parcell of the land for to make any claime, &c. and dare not approach more nigh unto the same land, save to such a place called Dale, and commandeth his servant to go to the same place of Dale, and there to make a claime for him, &c. if the servant do, &c. this seemeth as good claime for his Master, as if he had been there in his own person, for that the servant did all that his Master durst do, and ought to do by the Law in such case.

Also, if a man be so sick, or so lame that he may not

not in any manner come to the land, nor to any parcell of the same, or if there be a recluse that may not because of his order go out of his house, &c. if such a manner of person command his servant to go and make claime for him, &c. and the servant dare not go to the land, nor to any parcell thereof for doubt of beating, maime, or death, and for that cause such servant commeth as nigh to the land as he dare for such dread and maketh his claime, &c for his Master, it seemeth that such claime for his Master is good and strong in Law, for else his Master should be in too great mischiefe, for it may well be that such a person that is sick or lame, or recluse, cannot find any servant that dare go unto the land, nor to any parcell of it to make the claime for him &c. But if the Master of such servant be in good health, and may and dare well to go to the tenements, or to the parcell of it to make his claime for him, &c. if such a Master command his servant to go to some parcell of the land and make claime for him &c. And when the servant is going to do the commandement of his Master, he heareth by the way such things that he dare not go to any parcell of the land for to make any claime for his Master, and for that cause he goeth as nigh unto the Land as he dare for doubt of death, and there he maketh claime for his Master in the name of his Master, &c. It seemeth that the doubt in the Law in such case shall be, if such claime availe his Master or not, for this, that the servant did not all that his Master at the time of commandement durst to have done.

Also, some have said, that where a man is in prison and is disseised, and the disseisor dieth seised,

failed, during the time that the disseisee is in prison, by which the tenements descended to the heire of the disseisor, they have said that this shall not hurt the disseisee that is in prison, but that he may well enter notwithstanding such descent, for this, that he may not make continuall claime when he was in prison. And also if such a one that is in prison be outlawed in an action of debt or trespasse, or in appeale of robbery, &c. he shall reverse such outlawry by writ of Error, &c because he was in prison at the time of the outlawry against him pronounced.

Also, if a recovery be had by default against such a one that is in prison, he shall avoid the judgement by a writ of Error. for this, that he was in prison at the time of such default made, &c. and because that such matters of Record shall not hurt them that be in prison, but that it shall be reversed, &c. à multo fortiori, It seemeth that a matter indeed, that is to say, such descent had when he was in prison shall not hurt him, &c. especially for this, that he may not go out of prison to make continuall claime, &c.

And in the same manner it seemeth to them where a man is out of the Realme in the Kings service for business of the Realme, if such a man be disseised when he is in the service of the King, that such descent shall not hurt the disseisee. but for this, that he might not make continuall claim, &c. it seemeth unto them, that when he commeth againe into England, he may enter againe upon the heire of the disseisor, &c. For such a man shall reverse an outlawry that is pronounced against him during the time that he is in service, &c. Ergo à multo fortiori he shall have aid by the Law in the other case, &c.

Also,

Also, others have said, that if a man be out of the Realme, though he be not in the Kings service, if such a man being out of the Realme be disseised of Lands or Tenements within the Realme, and the disseisor die seised, &c. the disseisee being out of the Realm it seemeth unto them, that when the disseisee commeth into the Realm, that he may well enter upon the heire of the disseisor, &c. and this seemeth unto them for two causes: One is that he that is out of the realm, may not have knowledge of the disseisin made unto him by understanding of the Law, no more than that a thing done out of the Realme may be tried within this Realm by the oath of twelve men, and to compell such a man to make continuall claime, which by the understanding of the Law can have no knowledge or Cognisance of such Disseisin made or done, this shall be inconvenient, namely, when such a disseisin is done unto him, when he was out of the Realme, and the dying seised was done when he was out of the Realme, for in such case he may not by possibility after the common presumption make no continuall claime: But otherwise it shall be if the disseisee were within the Realme at the time of the disseisin, or at the time of the dying seised of the disseisor, &c. Another matter they alledge for a proofe, that before the stat. of King E. the third made the 34. years of his raigne, by which statute Nonclaime is out, &c. the Law was such, that if a fine were levied of certaine lands or tenements, if any that was a stranger to the fine had right to have and to recover the same lands or tenements, if he came not and made his claime thereof within a year and a day next after

the

the fine levied, he shall be barred for ever, Quia dicebatur quod finis fine litibus imponebat. And that the Law was such, it is proved by the stat. of West the 2. De donis conditionalibus, where it speaketh if the fine be levied of Tenements given in the taile &c. Quod finis ipso jure sit nullus, nec habeant hæredes, aut illi ad quos spectat reversio (licet plenæ ætatis fuerint, in Anglia, & extra prisonam) necesse apponere clameum suum. So it is proved, that if a stranger that hath right unto the tenements, if he were out of the Realme at the time of the fine levied, &c shall have no damage, though that such fine was matter of record: by greater reason it seemeth unto them that a disseisin and descent that is matter in deed shall not so grieve him that was disseised when he was out of the Realme at the time of that disseisin, and also at the time that the Disseisor died seised, &c. but that he may well enter notwithstanding such descent. Also inquire if a man be disseised, and he arraigne an assise against the disseisor, and the recognitors of the assise chante for the plaintife, and the Justices of assise will be advised of their judgements untill the next assise, &c. and in the meane season the disseisor dieth seised, &c. yet the said suit of the assise shall be taken in Law for the disseisee a continuall claime, insomuch that no default was in him &c.

Also, inquire if an Abbot of a Monastery die, and during the time of vacation, a man wrongfully entreth in certaine parcels of land of the Monastery, claiming the Land unto him and his heires, and of that estate dieth seised, and the land descendeth unto his heires, and after that an Abbot is chosen, and made Abbot of the Monastery,

Monaſtery, a queſtion is, if the Abbot may enter upon the heire or not. And it ſeemeth to ſome that the Abbot may well enter in this caſe, for this, that the Covent in time of vacation was no perſon able to make continuall claime, for no more than be they perſonable to ſue an action, no more be they perſonable to make continual claim, for the Covent is but a dead body without head, for in time of vacation a grant made unto them is void, and in this caſe an Abbot may not have a writ of Entre upon diſſeiſin againſt the heire, for this, that he was never diſſeiſed. And if the Abbot may not enter in this caſe, then he ſhall be put into his writ of Right, which ſhall be heard for the houſe. But which it ſeemeth to them that the Abbot may well enter, &c.

Quæras de dubiis, Legem bene dicere ſi vis,
Quærere dat ſapere quæ ſunt legitima vere.

Releaſes.

RElealeſ be in diverſ manners, that is to ſay: Releaſe of right that a man hath in lands or tenements: and releaſe of actions reals and perſonals, and of other things. Releaſe of all the right that a man hath in lands or tenements, &c. is commonly made in ſuch forme, or to ſuch effect. Noverint univerſi per præſentes me, A. B. remiſiſſe, relaxaſſe, & omnino de me & hæredibus meis quietum clamaſſe E de D. totum jus, titulum, & clameum meum quæ habui, habeo, vel quoviſmodo in futurum habere potero, de, & in uno meſſuag' cum priñ in P. And it is to be underſtood, that theſe words Remiſiſſe & quietẽ

quiet clamaſſe) be of ſuch effect as theſe words Relaxaſſe, &c.) and alſo theſe words which be commonly put in ſuch deeds of releaſes, &c. that is to be underſtood, Quæ quoviſmodo in futurum habere poſsem, be as words void in the Law, for no right paſſeth by a Releaſe, but the right that the releaſor hath at the time of his releaſe made: For if it be father and ſon, and the father be diſſeiſed, and the ſon living his father releaſeth by his deed to the diſſeiſor all the right that he hath, or may have in the ſame tenements, without clauſe of warrantize &c. and after the father dyeth, the ſon may lawfully enter upon the poſſeſſion of the diſſeiſor, for this, that he had no right in the land living his father, but the right deſcended unto him by deſcent after the releaſe made by the death of his father. Alſo, in a releaſe of all the right that a man hath in certaine lands, it behoveth unto him to whom the releaſe is made in ſuch caſe, that he hath a Freehold in the lands in deed, or in the Law, at the time of the releaſe made, for in every caſe where he to whom the releaſe is made hath a Freehold in deed or in law at the time of the releaſe made, &c. the releaſe is good, Franktenement in law is, as if a man have diſſeiſed another and thereof dieth ſeiſed by the which the tenements deſcend unto his ſon, howbeit that his ſon enter not in the tenements, yet he hath a franktenement in the Law, which by force of the deſcent is caſt upon him, and therefore the releaſe made is good enough. And if he take a wife ſo being ſeiſed in the law, howbeit that he never enter in deed, and dieth, his wife ſhall have thereof her dower. And in ſuch caſe of releaſe of all his right, howbeit that he to

whom

whom the release is made, he hath any thing in the franktenement, neither in deed nor in law, yet the release is good enough. As if the disseisee have let land that he had by disseisin to another for terme of his life, saving the reversion to him, if the disseisen or his heires release unto the disseisee all the right, &c that release is good for that that he to whom the release is made, had in him a reversion at the time of the release made. In the same manner if a leafe be made to a man for terme of life, the remainder unto another for terme of life, the remainder unto the third in taile, the remainder unto the fourth in fee, if a stranger that hath the right unto the land release all his right unto any of them in the remainder, such release is good, for this, that every of them hath a remainder vested in himselfe: yet if the tenant for terme of life be disseised, and after he that hath right (the possession being in the disseisee) release unto one of them to whom the remainder was made all his right &c. that release is void, for that that he ne had in him no remainder in deed, but all only a right of remainder at the time of the release made.

And note, that every release made to him that hath a reversion or remainder in deed, shall serve and help them that have the franktenement, as well as them to whom the release is made, if the tenant have the release in his hand &c.

In the same manner a release made to a tenant for terme of life, or to a tenant in the taile, shall enure unto them in the reversion, or to them in the remainder, as well as to the tenant of the franktenement, and they shall have as great advantage of that, if that they may shew it.

And

And if there be lord and tenant, and the tenant is diſſeiſed, and the lord releaſeth unto the diſſeiſee all the right that he hath in the ſeigniory, or in the land: that releaſe is good, and the ſeigniory is extinct. And if the goods of the diſſeiſee be taken, and of them the diſſeiſee ſueth a Replegiare againſt the Lord, he ſhall compell the Lord to avow upon him, and if he will avow upon the diſſeiſor, then upon the matter ſhewed, the avowry ſhall be abated, for the diſſeiſee is tenant to him in right and in law.

Alſo, if land be given to a man in the taile, reſerving unto the donor and his heires a certaine rent, if the donee be diſſeiſed, and after the donor releaſeth to the donee all the right that he hath in the land, and after the donee entreth into the land upon the diſſeiſor: in this caſe the rent is gone, for this, that the diſſeiſee at the time of the releaſe made was tenant in right, and in law unto the donor, and the avowry of fine force ought to be made upon him by the donor of the rent behind, &c. But yet nothing of the right of the land, that is to ſay, of the reverſion, ſhall paſſe by ſuch releaſe, for this, that the donee to whom the releaſe was made then had nothing in the land but only a right, and ſo the right of the land may not paſſe by ſuch releaſe to the donee.

In the ſame manner it is, if a leaſe be made to one for terme of life, reſerving to the leſſor and to his heires certaine rent if the leſſee be diſſeiſed, and after the leſſor releaſeth to the leſſee and to his heires, and after the leſſee entreth, howbeit that in this caſe the rent is extinct, yet nothing of the right paſſeth, &c. Cauſa quæ ſupra. But if it it be very Lord, and very tenant, and the tenant

nant maketh a feoffment in fee, the which feoffee never became tenant to the Lord, &c. if the Lord releaſe to the feoffor all his right &c. that releaſe is void, for this, that the feoffor hath no right in the land, and he is no tenant in right to the land, but only tenant as for the avowry to be made, and he ſhall never compell the Lord to avow upon him, for the Lord may avow upon the feoffee if he will. Otherwiſe it is where the very tenant is diſſeiſed, as in caſe aforeſaid, for if the very tenant that is diſſeiſed holdeth of the Lord by knights ſervice & dieth, his heire being within age, the Lord ſhall have and ſeiſe the ward of the heire. And ſo he ſhall have the ward of the feoffor that made the feoffment in fee, and ſo it is a great diverſity between the two caſes.

Alſo, if a man enfeoffe another in his Land upon truſt, and to the intent that he ſhall performe his laſt will, and the feoffor occupieth the ſame at the will of his Feoffees, and after the feoffees releaſe by their deed unto the feoffor all the right, &c. This hath been in queſtion if ſuch releaſe be good or not, and ſome have ſaid that ſuch releaſe is void, for this, that no privity was between the Feoffees and their Feoffor, inſomuch that no Leaſe was made after ſuch feoffment by the feoffees and their feoffor, to hold at their will, &c. and ſome have ſaid the contrary, and that for two cauſes. One is, that when ſuch feoffments are made upon confidence, to performe the will of the Feoffor, that it ſhall be underſtood by the law, that the feoffee by and by ought to occupy the Land at the will of his Feoffees, and ſo it is ſuch manner of privity between them, as if a man make a feoffment to other perſons,

and they incontinent upon the feoffment will say and grant that the Feoffor shall occupy the land at their will &c. Another cause they alledge, that if such land be worth forty shillings by yeare, &c. That such feoffor shall be sworne in Assises, and in other Inquests, in pleas reals, and and also in pleas personals, of what great sums soever that the plaintifes will declare, &c. And this is by the common Law of the Land: Ergo this is for a great cause, and the cause is that the law will that such feoffors and their heirs ought to occupy, &c. And to take thereof rent and all the profits, and all manner of issues and rendues, &c. as though the tenements were their own without interruption of the feoffees, notwithstanding such Feoffments. Ergo the same law giveth a privity between such feoffors, and their Feoffees upon confidence, &c. For which causes they have said, that the Release made by such feoffees upon confidence to the feoffor, or to his heires, &c. so occupying the land, &c. shall be good enough &c. And this is the better opinion as it seemeth. Quere since the statute 27. H 8. ca. 10. Also releases after the matter in deed sometime have their effect by force to enlarge the estate of them to whom the release is made: As if I let certaine land to a man for terme of yeares, by force whereof he is possessed, and I release unto him all the right that I have in the land without more words set or put in the deed, and deliuered unto him the deed: Then he hath estate but for terme of his life and the cause is for this that where the Reuersion or the Remainder is in a man the which will inlarge by his release the estate of the tenant, &c. he shall have no greater

er eſtate but in the manner and forme as if ſuch a Lord were ſeiſed in Fee, and will by his deed make eſtate to one in a certaine forme, &c. and deliver unto him ſeiſin by force of the ſame deed, if in ſuch deed of Feoffment there be no word of Inheritance, &c. Then he hath eſtate but for terme of life, &c and ſo it is in ſuch Releaſe made by him in the Reverſion, or in the remainder: For if I let land to a man for terme of life, and after I releaſe unto him all my right without more ſaying in the releaſe, his eſtate is not inlarged. But if I releaſe unto him and to his heirs of his body engendred, then he hath fee taile. And if I releaſe unto him and to his heires, then hath he fee ſimple. So it behoveth in ſuch caſe to ſpecifie in the deed, what eſtate he is to whom the releaſe is made ſhall have, &c And ſometime a releaſe ſhall inure to ſet and put the right of him that maketh the releaſe to him to whom the releaſe is made: As a man is diſſeiſed, and he releaſeth unto the Diſſeiſor all the right that he hath. In this caſe the diſſeiſor hath his right, ſo that where his before eſtate was wrong, now by the releaſe it is lawfull & right. But note well, that when a man is ſeiſed in fee ſimple of any lands or tenements, & another will releaſe unto him all the right that he hath in the ſame tenements, it needeth not to ſpeake of the heires of him to whom the releaſe is made, for this, that he had fee ſimple at the time of the releaſe made: for if the releaſe were made to him and to his heires for one day, or for one houre, this ſhall be as ſtrong unto him in the Law, as he had releaſed to him and to his heires, for when his right was gone from him at one time

by his release without any condition, &c. to him that had fee simple, it is gone for ever. But where a man hath a reversion or a remainder in fee simple at the time of the release made, then if he will release to the Tenant for terme of years, or for terme of life, or in the taile it behoveth to determine the estate that he to whom the release is made shall have by force of the same release: For this, that such release goeth to inlarge the estate, &c. of him to whom the release is made: but otherwise it is where a man hath but a right unto the Land, & had nothing in the reversion, nor in the remainder in deed: For if such a man release all his right to one that is tenant of the franktenement, all his right is gone, though that no mention be made of the heires of him to whom the release is made. For if I let land to a man for terme of life, if I after release unto him for to inlarge his estate, either it behoveth that I release unto him and to his heires of his body ingendred, or to him and to his heires males of his body begotten or by such semblable estate, &c. or otherwise he hath no greater estate than he had before. But if my tenant for terme of life let the same land out to another for terme of the life of the Lesse, the remainder to another in Fee, now if I release unto him unto whom my tenant letteth for terme of life, I shall be barred for ever, though that no mention be made of his heires. for this, that at the time of the release made I had no reversion, but only a right to have the reversion: For by such a lease with a remainder over that my tenant made in this case my reversion is discontinued, and such a release shall enure unto him in the re-

mainder

mainder to have advantage of this, as well as to the tenant for terme of life, for to that intent the tenant for terme of life, and he in the remainder be as one tenant in the Law, and he as if one tenant were ſole ſeiſed in his demeſne as of fee at the time of ſuch releaſe made unto him. Alſo, if a man be diſſeiſed by two, if he releaſe unto one of them, he ſhall hold his fellow out of the land, and by ſuch releaſe ſhall ſole have poſſeſſion and eſtate in the land. But if one diſſeiſor infeoffe two in fee, and the diſſeiſee releaſe to one of them, this ſhall enure to both the ſaid feoffees. And the cauſe of the diverſity betweene theſe two cauſes, is apparant enough.

Alſo, if I be diſſeiſed, and the diſſeiſor is diſſeiſed, if I releaſe to the diſſeiſor of my diſſeiſor, my diſſeiſor ſhall never have Aſſiſe nor enter upon his diſſeiſor, for this, that his Diſſeiſor hath my right by my releaſe, &c. And ſo it ſeemeth in this caſe, that if there were twenty diſſeiſors each after other, and I releaſe to the laſt diſſeiſor, he ſhall bar all the other of their actions and their title. And the cauſe is, as it ſeemeth, for this, and in many caſes when a man hath a lawfull title to enter, though he enter not, &c. he ſhall defeat all meane titles by his releaſe, &c. But this is not in every caſe, as ſhall be ſaid afterward.

Alſo, if a man be diſſeiſed, the which hath a ſon within age, and dieth, and being the ſon within age, the diſſeiſor dieth ſeiſed, and the land deſcendeth to the heire, and a ſtranger abateth, & after the ſon of the diſſeiſee when he commeth unto full age releaſeth all his right &c. to the abator: In this caſe the heire of the diſſeiſor

shall have no Assise of Mordancestor against the abator, but he shall be barred of the Assise. for this, that the abator hath the right of the son of the disseisee by his release, and the entry of the son was lawfull, &c. for this, that he was within age at the time of the descent, &c. But if a man be disseised, and the disseisor maketh a feoffment upon condition, that is to say, to yeild unto him certaine rent, and for default of payment a reentry, &c. if the disseisee release to the feoffee upon condition yet this amendeth not the estate of the feoffee upon condition, for notwithstanding such release, yet his estate is upon condition as it was before. In the same manner it is where a man is disseised of certaine land, and the disseisor granteth a rent charge out of the same land though that after the disseisee releaseth unto the disseisor, &c. yet the rent charge abideth in his force: And the cause is in these two cases, that a man shall have no advantage by such release that shall be against his own proper acceptance, and against his own grant. And though that some have said, that where the entry of a man is congeable upon a tenant, if he release to the same tenant, that this availeth upon the tenant, so as he had entred upon the tenant, and after infeoffed him, &c. this is not true in every case, for in the first case of these two cases, if the disseisee in fee enter upon the feoffee upon condition and after infeoffeth him, then the condition is all put alide and void. And in the second case if the disseisee enter and enfeoffe him that granted the rent charge, then is the rent charge avoyded. But it is not avoyded by any such release without entry made &c.

Also,

Also, if a man be disseised by a child within age, which alieneth in fee, and the alienee dieth seised, and his heire entreth (being the disseisor within age) now is it in the election of the disseisee to have a writ of Dum fuit infra ætatem, or a writ of right against the heire of the alienee, and which writ soever he taketh of them, he ought to recover by the Law. And also he may enter into the land without any recovery, and in this case the entry of the disseisee is taken away: but in this case if the disseisee release his right to the heire of the alienee, and after the disseisee bringeth a writ of Right against the heire of the alienee, and he joyneth the mise upon the cleare right, &c. the grand Assise ought by the Law to find that the tenant hath more cleare right, &c. than hath the disseisee, for this, that the tenant hath the right of the disseisee by his release, which is more ancient and more cleare right than the right of the disseisee, for by such release all the right of the disseisee passeth unto the tenant, and is in the tenant. And to this some have said, that in such case where a man hath right to lands or tenements (but his entry is not lawfull) if he release unto the tenant, &c. then such release shall enure by way of extinguishment. And unto this it may be said, that this is truth unto him that releaseth, for by his release he hath dismissed himselfe cleane of his right as to his person. But yet the right that he had may well passe and go unto the tenant by his release, for it should be inconvenient that such an ancient right should be extinct all utterly &c. for it is commonly said, that right may not dye. But a release that goeth by way of extinguishment against all persons,

is where he to whom the release is made, may not have this that to him is released. As if there be Lord and Tenant, and the Lord releaseth unto the tenant all the right he hath in the Lordship, or all the right he hath in the Land, or such a release goeth by way of extinguishment against all persons, for this, that the tenant may not have the same of himselfe. In the same manner is a release made to the tenāt of land of a rent charge, or of a common of pasture, for this, that the tenant may not have that that unto him is released, &c. So such releases go away by extinguishment against all persons.

Also, to prove that the grand assise ought to passe for the demandant in the case aforesaid, I have heard often in the lecture upon the Statute of West the 2. that beginneth, In casu quando vir amiserit per defalt̄ tenementum quod fuit jus uxor' suæ, &c. that at the common law before that Statute, if a lease were made to a tenant for terme of life, the remainder over in fee, and a stranger by a fained action recover against the tenant for terme of life by default and after the tenant dyeth, he in the remainder hath no remedy before the Statute, for this, that he had no possession of the land but if he in the remainder had entred upon the tenant for terme of life, and disseised him, and after the tenant entreth upon him, and after the tenant for terme of life loseth by such recovery had by default, and dyeth: now he in the remainder may well have a Writ of Right against him that recovered, for this, that the mise shall be joyned only upon the cleare right. And yet in this case the seisin of him in the remainder was defeated by the entry of the Tenant for terme of

life,

life. But peradventure ſome will argue and ſay, that he ſhall have no writ of right in this caſe, for this, that when the miſe is joyned in ſuch manner, that is to ſay, if the tenant have more cleare right to the land in the manner as it is holden, then the demandant hath in the manner as he demandeth. And for this, that the ſeiſin of the demandant was defeated by the entry of the tenant for terme of life, then he hath no right in manner as he demandeth. Unto this it may be ſaid, that thoſe words (Modo & forma prout, &c.) in many caſes be words of the manner of pleading, and no words of ſubſtance: For if a man bring a writ of Entre (In caſu proviſo) of alienation made by the tenant in dower to his diſinheritance, and p'leadeth of the alienation made in fee, and the tenant ſaith, that he altened not in the manner as the demandant hath declared, and upon this they be at iſſue, and it is found by verdict that the tenant altened in the taile, or for terme of anothers life, the demandant ſhall recover, and yet the alienation was not in the manner as the demandant hath declared.

Alſo, if there be Lord and tenant, and the tenant holdeth of the Lord by fealty only, and the Lord diſtraineth the tenant for rent, & the tenant bringeth a writ of treſpaſſe againſt his Lord for his cattell ſo taken, & the Lord pleadeth that the tenant holdeth of him by fealty & certaine rent, & for the rent behind he came to diſtraine, &c. & demandeth judgement of the writ brought againſt him, Quare vi & armis, &c. And the other ſaith that he holdeth not of him in the manner as he ſuppoſeth, and upon this they be now at iſſue, and it is found by verdict that he holdeth of him by

fealty

fault cannam. In this case the writ shall abate and yet he held not of the Lord in the manner as the Lord hath said, for the matter of the tilte is, whether the tenant holdeth of him or not: For if he hold of him, though the Lord distreine for other services that he ought not have, yet such a writ of trespasse, Quare vi & armis, &c. lieth not against the Lord but shall abate.

Also, in a writ of trespasse of beating, or of goods taken, if the defendant plead nonculpable in the manner as the plaintife supposeth, and it is found that the defendant is culpable in another Town, or at another day than the plaintife supposeth, yet he shall recover: And in many more other cases these words, that is to say, in the manner as the demandant or the plaintife hath supposed, be no matter of substance of the tilte: for in a writ of right where the mise is joyned upon the cleare right, it is as much to say, and to such effect, that is to wit, whether hath the more right, the tenant or the demandant to the thing so demanded, &c

Also if a man be disseised, & the disseisor dieth seised, &c. and his son & heire is in by descent, and the disseisee entreth upon the heire of the disseisor, the which entry is a disseisin, &c. if the heire bring an Assise, or a writ of Right against the disseisee, he shall be barred: for this, that when the grand assise is sworne, their oath is upon the cleare right and not upon the possession, &c. for if the heire of the disseisor had brought an Assise of Novel disseisin, or a writ of Entre in nature of assise, and recovered against the disseisee, and sued execution, yet may the disseisee have a writ of Entre in the Per against him of the disseisin made

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unto him by his father, or he may have againſt the heire a writ of Right: But if the heire ought to recover againſt the diſſeiſee in the caſe aforeſaid by a writ of Right, then all his right ſhall be clearely gone, for this, that a finall judgement ſhould be given againſt him, which ſhould be againſt reaſon where the diſſeiſee hath more cleare right, &c.

And know ye my ſon, that in a writ of right after this that the foure Knights be choſen in the grand aſſiſe, then there is no greater delay than in a writ of Formedon, after this that the parties be at iſſue, &c. And if the miſe be joyned upon battell, then there is leſſe delay.

Alſo, a releaſe of all the right, &c. in ſome caſe is good, made unto him that is ſuppoſed tenant in the Law, though he have nothing in the tenements, as in a Præcipe quod reddat, if the tenant alien the land hanging the writ, and after the demandant releaſeth to him all his right, that releaſe is good, for this, that he is ſuppoſed to be tenant by the ſuit of the demandant, and yet he hath nothing in the land at the time of the releaſe made, In the ſame manner it is if in a Prec' quod reddat the tenant vouch, and the vouchee enter into the garranty, if after the demandant releaſe to the vouchee all his right, &c. this is good enough, for this, that the vouchee after this that he hath entred into the garranty, is tenant in law to the demandant.

Alſo, as to releaſes of actions reals and actions perſonals, it is ſo, that ſome actions be mixt in the realty, and in the perſonalty, as if an action of Waſte be ſued againſt the tenant for terme of life, this Action is in the realty, for this, that

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the place wasted shall be recovered. And also it is in the personalty, for this, that the treble damage shall be recovered for the wrong and waste done by the tenant, and for this, in this Action a release of actions reals is a good plea in bar, and so is a release of actions personals. In the same manner it is in Assise of Novel disseisin, for this, that it is mixt in the realty and in the personalty. But if such assise be arraigned against the disseisor, the tenant of the disseisor may plead a release of all actions personals for to bar the Assise, but not a release of actions reals, for none shall plead a release of actions reals in assise, but the tenants, &c.

Also, in such actions that ought to be sued against the tenant of the franktenement, if the tenant have a release of all actions reals of the demandant made unto him before the writ purchased, and he pleadeth it, this is a good plea for the demandant to say that he that pleadeth that plea had nothing in the Franktenement at the time of the release made, for that he had no cause to have an action reall against him.

Also, in such case where a man may enter in lands or tenements, and may also have of this an action reall which is given unto him by the law against the tenant: if in this case the demandant releaseth to the tenant all manner action reals, yet this taketh not away the entry of the demandant, but the demandant may well enter notwithstanding such release, for this that nothing is released but the action, &c. In the same manner it is of things personals: As if a man wrongfully take my goods, if I release unto him all actions personals, yet I may by the Law take

take my goods out of his poſſeſſion.

Alſo, if I have cauſe to have a writ of Detinue of my goods againſt another, though that I releaſe unto him all actions perſonals, yet I may take my goods out of his poſſeſſion for this, that no right of goods is releaſed to him but only the action &c. Alſo, if a man be diſſeiſed, and the Diſſeiſor maketh a Feoffment unto divers perſons to his uſe, and the Diſſeiſor continually taketh the profits, &c. and the diſſeiſee releaſeth unto him all actions reals, and after he ſueth againſt him a writ of Entre in nature of aſſiſe, becauſe of the ſtatute, for this, that he taketh the profits: Inquire how the diſſeiſor ſhall be holpen by the ſaid releaſe, for if he will plead the releaſe generally, then the demandant may ſay that he had nothing in the franktenement at the time of the releaſe made, & if he plead the releaſe ſpecially, then behoveth him to knowledge a diſſeiſin, and then may the demandant enter in the land &c. by his cogniſance of the diſſeiſin, &c. But peradventure by ſpeciall pleading he may be barred of the action that he ſueth, &c. though that the demandant may enter &c.

Alſo, if a man ſue Appeale of Felony of the death of his Anceſtor againſt another, though the appellant releaſe unto the defendant all manner actions reals and perſonals, this ſhall not help the defendant, for this, that this appeale is not an act on reall, inſomuch that the appellant ſhall not recover any realty, nor ſuch appeale is no action perſonall, inſomuch that the wrong was unto his Anceſtor and unto him: but if he releaſe to the defendant all manner of actions then it ſhall be a good bar in appeale. And ſo a

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man may see that a release of all manner of actions, is better than a release of actions reals and personals, &c.

Also, in appeale of robbery, if the defendant will plead a release of the appellant of all actions personals this seemeth no plea, for an action of appeale where the appellant shall have judgmens of death, &c is more high than an action personall, and it is not properly said an action personall, and therefore if the defendant will have the release of the appellant to bar him of the Appeale, it behoveth him to have a release of all manner of Appeales, or a Release of all manner of actions, as it seemeth, &c. But in Appeale of Mayhem, a release of all manner of actions personals is a good plea in bar, for this, that in such an action he shall recover but damages.

Also, if a man be outlawed in an action personall by proces of the original, and bring a writ of Error, if he at whose suit he was outlawed will plead against him a release of actions personals, this seemeth no plea, for by the said action he shall recover nothing in the personalty, but all only to reverse the outlawry: But a release of a writ of Error shall be a good plea, &c.

Also if a man recover debt or damage, and he release to the defendant all manner of actions, yet he may lawfully sue execution by Capias ad satisfaciendum, or by Elegit, or by Fieri facias, for execution by such writs may not be said an action, but if after a yeare and a day the plaintife will sue a Scire facias to have execution, &c. then it seemeth a release of all actions shall be a good plea in bar: But some have thought the contrary, insomuch that the writ of Scire facias is a

writ

writ of execution and is to have execution. But inasmuch that upon the same writ the defendant may plead divers matters after the judgement given to put him from execution, as outlawry, and divers other &c. therefore it may well be said action, &c. and I trow that in a Scire facias out of a fine, a release of all manner of actions is a good plea in bar, but where a man hath recovered debt or damage, and it is accorded between them, that the plaintiffe shall not sue execution, then it behoveth that the plaintiffe make a release to him of all manner executions.

Also, if a man release to another all manner demands, this is the most best release that he to whom the release is made can have, and most shall enure to his advantage, for by such release of all manner of demands, all manner of actions reals and personals, and actions of appeales be gone and extinct, and all manner of executions be gone and extinct: and if a man hath title to enter in any lands or tenements, by such release his title is gone. And if a man have rent service or rent charge, or common of pasture, &c by such release of all manner demands to the tenant of the land, whereof the service, or the rent is going out, or in what land soever the common be, the service and rent, and the common is gone and extinct &c.

Also, if a man release to another all manner quarrels or all controversies or debates between them. Inquire to what matter, and to what effect such words do extend.

Also, if a man be bound by his deed to another in a certain sum of money to pay at the feast of Saint Michael then next following, &c if the obligee

obligee before the ſaid feaſt releaſe to the obligor all actions, he ſhall be barred of the duty for ever, and yet he might have no action at the time of the releaſe made. But if a man let land to another for terme of yeares, to yeild at the feaſt of Saint Michael next inſuing forty ſhillings, and before the ſame feaſt he releaſeth to the leſſee all actions, yet after the ſame feaſt he ſhall have an action of debt for the nonepayment of the forty ſhillings notwithſtanding the ſaid releaſe. Study the cauſe of the diverſity betweene theſe two caſes.

Alſo, where a man will ſue a Writ of Right, it behoveth that he plead of the ſeiſin of himſelfe or of his anceſtors, and alſo that the ſeiſin was in time of the ſame King, as he pleadeth in his plea, for this is an ancient Law uſed, as it appeareth by report of a certaine plea in ſuch forme as inſueth. Sir I. Barrey brought a Writ of Right againſt Reinold Aſhlington, and demanded certaine tenements, &c. the mile was joyned in the bankes, and the originall and the proces were ſent before Juſt. errants, where the parties came, and the 12. Knights were ſworne, without challenge of the parties to be alloWed, for this, that the election was made by aſſent of the parties, with the foure Knights, and the oath was ſuch, that I ſhall ſay truth &c. whether R. of B. have more right to hold the tenements that I. Barrey demanded againſt him by his Writ of right, or John to have the tenements as he demandeth, and for nothing to let to ſay the truth, as God me help, &c without ſaying to their knowledge, and ſuch oath ſhall be made in attaint and battell, and in Waging of law, for thoſe do bring every thing unto an end: but I. B. plea-

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deed of the disseisin of one Ralph his ancestor in the time of K H and Rainold upon the mise joyned tendred halfe a marke for the time, &c. and upon this Herle iust. said to to the grand assise, after that they were charged upon the cleare right: Goodman, Rainold gaue halfe a marke to the K. for that time, to the intent that if you find that the ancestor of I. was not seised at the time that the demandant hath pleaded, you shall enquire no further upon the right: and for this ye shall say to us, whether the ancestor of I. Ralph by name, was seised in the time of K. H. as he hath pleaded, or not: and if ye find that he was not seised in the time, ye shall enquire no more, and if ye find he was seised, then enquire further of the right: and after the grand assise came with their verdict, and said, that Ralph was not seised in the time of K. H. whereby it was awarded, that Rainold should hold the tenements against him demanded to him and to his heires quite of I. Barrey and his heires, to the remnant, and Iohn in the mercy.

Confirmation.

A Deed of confirmation is most commonly in such forme, or to such effect: Noverint universi, &c. me A. de B. ratificasse, & p̄dasse, & confirmasse C. de D. statū & possessiorē quos habeo, de, & in uno messuage cum pertinent. in N. &c. And in some case a deed of confirmation is good and vatleable, where in the same case, a deed of release is not good nor available As I let land to a mā for terme of his life, the which letteth the same land to another for forty yeares, by force of the which he is possessed, if I by my deed confirme the state of the tenant for terme of years, and the

tenant for term of life dyeth during the term of yeares, I may not enter the land during the same terme, yet if I by my deed of release have released to the tenant for terme of yeares in the life of the tenant for terme of life, the release shall be void, for this, that then no privity was between me and the tenant for terme of yeares, for a release is not available to the tenant for terme of yeares, but where a privity is between him and him that releaseth. In the same manner it is if I be disseised, and the disseisor make a lease to another for terme of yeares, if I release unto the termor, it is void: but if I confirme the estate of the termor, that is good and effectuall. Also, if I be disseised, and I confirme the state of the disseisor, then hath he a good and rightfull estate in fee simple, though that in the deed of confirmation no mention is made of his heirs, for this, that he had fee simple at the time of the confirmation: for in such case if the disseisee confirme the estate of the disseisor, to have and to hold to him for terme of his life, yet the disseisor hath fee simple, and is seised in his demesne as of fee, for that when his estate was confirmed, he hath fee simple, and in such deed he may not change his estate without entry upon him, &c. In the same manner it is, if the estate be confirmed for terme of a day, or for terme of an houre, he hath a good estate in fee simple for this, that his estate in fee simple was once confirmed, for confirmare, idem est quod firmum facere.

Also if two be disseisors, and the disseisee releaseth to the one, he shall hold his fellow out of the land: But if the disseisee confirme the estate of one without more speech in the deed, some say, that

that he shall not hold his fellow out, but he shall hold joyntly with him, for that nothing was confirmed but his estate was joynt: and for this some have said that if two joyntenants be, and the one confirmeth the estate of the other, that he hath but a joynt estate as he had before. But if he have such words in the deed of confirmation, to have and to hold to him and to his heires all the tenements whereof mention is made in the confirmation, then he hath estate sole in the tenements, and therefore it is a good and a sure thing in every confirmation, to have these words, to have and to hold the tenements, &c. in fee, or in fee taile, or for terme of life, or for terme of yeares after, or as the case or matter is: for to the intent of some, if a man let land to another for terme of life, and after he confirmeth his estate by these words, to have and to hold his estate to him and to his heires this confirmation, as concerning his heires, is void, for his heires cannot have his estate which was but for terme of life, but if he confirme his estate by these words, to have the same land to him and to his heires, this confirmation maketh fee simple in this case to him in the land, for this, that these words, to have and to hold, &c. goeth to the land and not to the estate that he hath, &c. Also if I let certaine land to a woman sole for terme of her life, the which taketh a husband, and after I confirme the estate to the husband and to the wife for terme of their two lives, in this case the husband holdeth not joyntly with the wife, but holdeth in the right of his wife for terme of his life: but this confirmation shall enure to the husband by way of remainder for terme of his life, if he survive his

wife. But if I let land to a woman sole for terme of yeares, which taketh a husband and after I confirme the estate to the husband and the wife for terme of both their lives, in this case they have joynt estate in the franktenement of the land, for this, that the wife had no franktenement before.

Also, if a parson of a Church charge the glebe of his Church by his deed, and the Patron and the Ordinary confirme the same grant, and all this is comprised within the same grant, the same grant shall be in his strength after the purpose of the same grant: but in such case it behoveth that the patron have fee simple in the advowson, for if he have estate in the advowson for term of life, or in taile, then the grant shall stand but during his life, and the life of the parson that granted it, &c

Also if a man let land for term of life, which tenant for terme of life chargeth the land with a rent in fee, and he in the reversion confirmeth the same grant, this charge is good enough, and effectuall. And if there be a perpetuall chantry, whereof the Ordinary hath nothing to meddle nor to do, the patron of the chantry, and the chaplaine of the same chantry may charge the chantry with a rent charge in perpetuity. Also in some case the verbs Dedi & concessi, have the same effect in substance, & shall enure to the same intent as this verb confirmavi: as if I be disseised of a plough land, and after I make such a deed &c. Sciant præsentes, &c. quod dedi to the disseisor the said plough land &c. And if I deliver only the deed to him without livery of seisin of the land, that is a good confirmation, and as strong

ſtrong in the law, as if he had in the deed this verb confirmavi, &c.

Alſo, if I let land to a man for terme of yeares by force of which he is poſſeſſed, & after I make him a deed, &c. quod dedi, vel conceſſi, &c. the ſame land, to have for terme of his life, and deliver him the deed, then by and by he hath eſtate in the land for terme of his life, and if I have in the deed, to have to him and to his heirs of his body ingendred, he hath eſtate in the taile, and if I ſay in the deed, to have and to hold to him and to his heires, he hath eſtate in fee ſimple, for this ſhall enure to him by force of confirmation to inlarge his eſtate. Alſo if a man be diſſeiſed, and the diſſeiſor dyeth ſeiſed, & his heire in by deſcent, after the diſſeiſee and heire of the diſſeiſor make joyntly a deed to another in fee, and livery of ſeiſin upon this is made as to the heir of the diſſeiſor that inſealeth the deed, the tenements paſſe by the ſame deed by way of feoffment, and as to the diſſeiſee that inſealeth the ſame deed, this ſhall not enure but by the way of confirmation: but if the diſſeiſee in this caſe bring a writ of Entrie in the (Per and Cui) againſt the alienee of the heire of the diſſeiſor, inquire how he ſhall plead the deed againſt the demandant by way of confirmation, &c. And know this my child, that it is one of the moſt honourable, laudable, and profitable things in our Law, to have the conſcience of well pleading, in actions reals and perſonals, and for this I counſell thee, eſpecially to ſet thy courage and care to learne that.

Alſo, if there be Lord and tenant, and the Lord confirmeth the eſtate that the Tenant hath in the tenements, yet the ſeigniory wholly abideth

to the Lord as it was before. In the same manner it is if a man have a rent charge out of certaine land, and he confirmeth the state that the tenant hath in the land, yet abideth to the confirmer the rent charge In the same manner it is if a man have common of pasture in the land of any other if he confirmeth the state of the tenant of the land nothing shall depart from him of his common, but this notwithstanding the common abideth to him as it was before.

But if there be Lord and tenant, which holdeth of his Lord by fealtie and twenty shillings of rent, if the Lord by his deed confirme the estate of the tenant to hold by land, &c. or by an ob in this case the tenant is discharged of all other services, and shall pay nothing to the Lord, but that that is compriſed within the same confirmation, yet if the Lord will by the deed of confirmation, that the tenant in this case ought to yeeld to him a Hawke, or a Role yearely at such a feast &c. this reservation is void, for this, that he reserveth to him a new thing that never was parcell of the services before the confirmation, and so the Lord may abridge the services by such confirmation, but he may not reserve to him a new service &c

Also if there be Lord Meine and Tenant and the tenant is an Abbot that holdeth of the meine by certaine services yearely, the which hath no cause to have acquittance against the meine for to bring a writ of Meine, &c. in this case if the meine confirme the estate that the Abbot hath in the land, to have and to hold the land unto him and his successors in frankalmoigne, or free almes, &c. in this case this confirmation is good,

and

and then the Abbot holdeth of the Meine in frankalmoigne: and the cause is, for that no new service is reserved, for all the services especially specified be extinct, and nothing is reserved to the meine, but the Abbot shall hold the land of him as it was before the confirmation, for he that holdeth in frankalmoigne ought to do no bodily service so that by such confirmation it appeareth the meine shall not reserve unto him no new service, but that the lands shall be holden of him as it was before, and in this case the Abbot shall have a writ of meine, if he be distrained in his default, by force of the said confirmation, where percase he might not have such a writ before.

Also, if I be seised of a villeine, as of a villeine in grosse, and another taketh him out of my possession claiming him to be his villeine, whereas he hath no right to have him as his villeine, and after I confirme the estate to him that he hath in my villeine, this confirmation seemeth void, for this, that none may have possession of a man as of a villeine in grosse, but he which hath right to have him as his villeine in grosse, and insomuch that he to whom the confirmation was made, was not seised of him as of his villeine at the time of his confirmation, such confirmation is void: but in this case if such words were in the deed, Sciatis me dedisse & confirmasse tali, &c. talem villenum meum, this is good, but this shall enure by force and way of grant, and not by way of confirmation, &c.

Also sometimes these verbs (Dedi & concessi) enure by way of extinguishment of the thing given or granted. As a tenant holdeth of his Lord by certaine rents, and the Lord by his deed

granteth to the tenant & to his heires the rent, &c. this shall enure to the tenant by way of extinguishment, for by this grant the rent is extinct. In the same maner it is, where one hath a rent charge of certaine land, and he granteth to the tenant of the land the rent charge, and the cause is for this, that it appeareth by the words of the grant that the will of the donor is, that the tenant shall have the rent, insomuch that he may have no rent out of his own land, for this, the deed shall be understood and taken for the most advantage and availe of the tenant that it may be taken, and that is by way of extinguishment.

Also, if I let land to a man for term of yeares, and after I confirme his estate without moe words put in the deed, he hath no greater estate but for terme of yeares, as he had before: But if I release to him my right that I have in the land without moe words put in the deed, he hath estate of franktenement. And so maist thou my child understand great diversities betweene releases and confirmations. And if I be within age, and let land to one for term of twenty years and he granteth the land for terme of ten yeares, so that he granteth but parcell of the terme. In this case when I am of full age, if I release unto the grantee of the lessee, &c this release is void, for this, that there is no privity betweene him and me. But if I confirme his estate, then this confirmation is good: But if my lessee grant all his estate to another, then my release made to the grantee is good and effectuall.

Also, if a man grant a rent charge out of his land to another for terme of his life, and after he confirmeth his estate in the same rent, to have and

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to hold to him in fee tatle, or in fee simple, this confirmation is void, as to the inlarging of his estate, for this, that he that confirmeth had no reuersion in the rent: but if a man be seised in fee of rent service, or of rent charge, and he granteth the rent to another for terme of life, and the tenant attourneth, and after he confirmeth the estate of the grantee in fee tatle, or in fee simple, this confirmation is good as to inlarge his estate after the words of the deed of confirmation, for this, that he that confirmed the estate at the time of the confirmation had the reuersion of the rent, &c. But in this case aforesaid, where a man granteth a rent charge to another for terme of life, if he will that the grantee shall have estate in the tatle, or in fee, him behoueth that the deed of the grant of the rent charge for terme of life, be surrendred or cancelled, and then to make it a new deed of such a rent charge, to have and to take to the grantee in the tatle, or in fee, Ex paucis dictis intendere plurima possis.

Attournment.

ATtournment is, if there be Lord and Tenant, and the Lord will grant by his deed the service of his tenant to another for terme of yeares, or for terme of life, or in tatle, or in fee, it behoueth that the tenant attourne to the grantee in the life of the grantor by force & vertue of the grant, or otherwise the grant is voyd. And attournment is no other thing in effect, but when the tenant hath heard of the grant made by his Lord, that the same tenant by word agree to the said grant, as to say to the grantee, I agree me to the grant made to you, or I am well content of the grant made to you, &c. But the more

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common attournment is to say, Sir, I attourne to you by force of the same grant, or I become your tenant, &c. or to deliver unto the grantee 1 d. or do any thing by way of attournment, &c.

Also if a man be seised of a manner, which manner is parcell in demesne, and parcell in service, if he will alien such a manner to another, it behoveth that by force of the alienation all the tenants that hold of the alienor (as of this manner &c.) attourne to the Alienee, or otherwise the services abide continually in the alienor, except tenants at will, for it needeth not that tenants at will attourne upon such alienation, &c. for this, that the same lands or tenements that they hold at will do passe to the alienee by force of such alienation.

Also if there be Lord and tenant, and the tenant letteth the tenements to a man for terme of life, the remainder to another in Fee, if the Lord grant the services to the tenant for terme of life in fee, in this case the tenant for terme of life hath fee in the services, but the services be put in suspence during his life, but his heires shall have the services after his death. and in that case it needeth not attournment, for by the acceptance of the deed of him that ought to attourne, this is attournement in it selfe, &c. But where the tenant hath as great and high estate in the tenements as the Lord hath in the seignory, in such case if the Lord grant the service unto the tenant in fee, this enureth by way of extinguishment, Causa patet.

Also, if there be Lord and tenant and the tenant maketh a lease to one for terme of life, saving the reversion unto him, if the Lord grant

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the seigniory to the tenant for terme of life in fee, in this case it behoveth that he in reversion attourne to the tenant for terme of life by force of the grant, or otherwise the grant is void, for this, that he in the reversion is tenant to the Lord.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by twenty manner of services, and the Lord granteth his seigniory to another, if the tenant pay or do any of the services to the grantee, this is a good attournment, of and for the services, though that the tenants intent was to attourne but of the same parcell, for this, that the Seigniory is an whole thing, though that there be divers manner of services that the tenant ought to do.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by many manner of services, and the Lord granteth the services to another by fine, if the grantee sue a Scire facias out of the same fine, for any parcell of the services, and had judgement to recover, this judgement is a good attournment in the Law for all the services.

Also, if the Lord of the rent granteth the services unto another, and the tenant attourneth by a penny, and after the grantee distraineth for rent behind, and the tenant to him make rescous: In this case the grantee shall have no Assise of the rent, but he shall have a Writ of Rescous, for that the gift of the penny was but by way of attournment. But if the tenant had given unto the grantee the said penny as parcell of the rent, or a halfe penny, or a farthing, by way of seisin of the rent, then this is a good attournment, and also it is a good seisin to the grantee of the rent,

and

and then upon such rescous the grantee shall have an assise, &c.

Also, if a man let Tenements for terme of yeares, by force of which the lessee is seised, and after the Lord granteth by his deed the reversion to another for terme of life, or in taile or in fee, it behoveth him in this case that the tenant for terme of yeares attourne, or otherwise nothing passeth to such grantee by such deed. And if in this case the tenant for terme of yeares attourne to the grantee, then by and by passeth the franktenement to the grantee by such attournment, without any livery of seisin, &c. for this, if any livery shall be made, or needeth to be made in such case, then the tenant for terme of yeares shall be at the time of the livery of seisin out of his possession, which should be against reason.

Also, if Land be let to a man for term of yeares, the remainder to another for terme of life, reserving to the lessor a certain rent by the yeare, and livery of seisin is made upon this to the tenant for term of years, if he in the reversion in such case grant his reversion to another, &c. and the tenant that is in the remainder after the terme of yeares attourneth, this is a good attournment, and he to whom the reversion is granted, by force of such attournment shall distraine the tenant for terme of yeares for the rent due after such attournment, though the tenant for terme of yeares never attourned unto him, and the cause is for that, where the reversion is dependant upon the state of franktenement, it sufficeth that the tenant of the Franktenement attourne upon such grant of reversion, &c. And it is to wit, that where a Lease for terme of yeares, or for terme

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of life, or a gift in the taile is made to any man, reſerving to ſuch a leſſor or donor certaine rent, if ſuch a leſſor or donor grant his reverſion to another, and the tenant of the land attourne, the rent paſſeth to the grantee, though in the deed of the grant of reverſion no mention is made of the rent, for this, that the rent is incident to the reverſion in ſuch caſe, and not è converſo; for if a man will grant the rent in ſuch caſe unto another, reſerving to him the reverſion of the land, though the tenant attourne to the grantee, this ſhall be but a rent lack, &c.

Alſo, if a man let land to another for terme of life, and after ſuch leaſe he confirmes by a deed the eſtate of the tenant for terme of life, the remainder to another in fee, and the Tenant for terme of life accepteth the deed, then is the remainder indeed to him to whom the remainder was given or limited in the ſame deed, for by the acceptance of the tenant for terme of life of the ſame deed, this is a grant of him, and ſo an attournment in law: but yet he in the remainder ſhall have no action of waſte, nor other benefit by ſuch remainder, but if he have the ſame deed in his hand by which the remainder was granted unto him, and for this, that in ſuch caſe the tenant for terme of life will retaine to him the deed, to the intent that he in the remainder ſhall not have an action of waſte againſt him, for this, that he may not come to have the poſſeſſion of the deed, &c. It ſhall be good in ſuch caſe for him in the remainder, that a deed indented be made by him that will make the confirmation, and the remainder over, &c. And he that maketh ſuch confirmation deliver a part of the

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Indenture to the tenant for terme of life, and the other part to him that hath the remainder, and then he by shewing of the part of the Indenture, may have an action of waste against the tenant for term of life, and also other advantage that he in the remainder may have in such case.

Also, if two Joyntenants be, which let land to another for termes of life, yeilding to them and their heires a certaine rent by yeare: In this case if one of the two Joyntenants in the Reversion release to the other Joyntenant in the same reversion, this Release is good, and he to whom the release is made, shall have only the rent of the tenant for terme of life and shall have a writ of waste against him, though he never attourned by force of such release. And the cause is, for the privity that ever was betweene the tenant for terme of life, and them in the reversion.

In the same manner, and for the same cause it is where a man letteth land to another for terme of his life, the remainder to another for terme of his life, reserving the reversion to the lessor, in this case if he in the reversion release to him in the remainder, &c. and to his heires all his right, &c. then he in the remainder hath a fee, &c. and shall have a writ of waste against the tenant for terme of life without any attournment of him, &c.

Also, if a lease be made for terme of life, the remainder unto another in the taile the remainder over the right heires of the tenant for terme of life, in this case if the tenant for terme of life grant his remainder in fee to another by his deed, the remainder by and by passeth by his deed without any other attournment. For if that any ought

ought to attourne in this case, it should be the tenant for terme of life: And it were in vain that he attourne upon his own grant, &c.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by certaine rent and Knights services, if the Lord grant the services of the tenant by fine, the services be by and by in the grantee by force of the fine, but yet the Lord may not distraine for any parcell of his services without attournment. But if the tenant dye, his heires being within age, the Lord shall have the ward of the body of the heire, and of the land, &c. notwithstanding that he never attourned: for this, that the seigniory was in the grantee maintenant by force of the fine.

And also in such case if the tenant die without heir, the Lord shall have the tenancy by way of Escheat. In the same manner it is if a man grant the reversion of his tenant for terme of life to another by fine, the reversion passeth presently to the grantee by force of the fine, but the grantee shall never have action of waste without attournment, &c. But yet if the tenant for terme of life alienes in fee, the grantee may enter, &c. for this, that the reversion was in him by force of the fine and such alienation was to his disinheritance. But in this case where the Lord granteth the services of his tenant by fine, if the tenant dye, his heire being of full age, the grantee by the fine shall not have the reliefe, nor never shall distraine for the reliefe except there had been some attournment of the tenant that died, &c. For of such things that lie in distresse, upon the which a writ of Replegiari is sued, &c. a man ought to avow the taking good and righteous, &c. and

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there ought to be attournment of the tenant, howbeit that the grant of such services be by fine. But to have ward of lands and tenements so holden during the nonage of the heire, or them to have by way of Escheate, there needeth not any distresse, &c. but an entry in the land by force of the right of the seignioyr that the grantee hath by force of the fine.

Also, in ancient Burroughs or Cities where tenements within the same Burroughs or Cities be devisable by testament by the custome and the use, &c. if in such Burrough or City a man be seised of rent service, or of rent charge, and he deviseth such rent or service to another by his testament and dyeth, &c. in this case he to whom the devise is made may distraine for the rent for the services behind, howbeit that the tenant never attourned. In the same manner it is, where a man letteth such tenements devisable to another for terme of life, or for terme of yeares, and deviseth the reversion by his testament to another in fee, or in fee taile, and dyeth, and anon after that the tenant maketh waste, he to whom the devise was made shall have a writ of waste, howbeit that the tenant never attourned: and the cause is for this, that the will of the devisor made by the Testament shall be performed after the intent of the devisor and if the effect of this should be upon the attourning of the tenant, &c. then percase the tenant would never attourne, and then the will of the devisor would never be performed, and therefore the devisee shall distraine, or have an action of waste without attournment For if a man devise such tenements to another by his testament (habend' sibi imperpe-

imperpetuum) and dieth, and the deviſee entreth, he hath a fee ſimple. Cauſa qua ſupra, and yet if a deed of feoffment were made to him by the deviſor of the ſame tenements (habendum & tenendum ſibi imperpet̃) and livery and ſeiſin were thereupon made, he ſhall have no eſtate but for terme of life, &c.

Alſo, if a man be ſeiſed of a manner which is parcell in demeine, and parcell in ſervices, and thereof be diſſeiſed, but the Tenant which holdeth of the Manner, never attourneth to the diſſeiſor: in this caſe, howbeit that the diſſeiſor dye, &c. and his heire is in by deſcent, yet may the diſſeiſee diſtraine for the rent being behind, & have the ſervice. But if the tenants come to the diſſeiſor, & ſay, we become your tenants, &c. or otherwiſe make attournment to him, &c. and after the diſſeiſor dieth ſeiſed, &c. then the diſſeiſee may not diſtraine for the rent, for that all the manner deſcended to the heire of the diſſeiſor. But if one hold of me by rent ſervice, which is a ſervice in groſſe, and another that no right hath, claimeth the rent, and receiveth and taketh the ſame rent of my tenant by coherſion of diſtreſſe, or by other forme, and ſo diſſeiſeth me by taking ſuch rent, howbeit that ſuch a diſſeiſor die ſeiſed by ſuch taking of the rent, yet after his death I may well diſtraine for the ſame rent being behind before the death of the diſſeiſor, and alſo after his death: and the cauſe is this, that ſuch is not by diſſeiſor, but by election at my will: for howbeit that he tooke the rent of my tenant, I may at all times diſtraine my tenant for the rent behind, &c. ſo it is to me, but as if I will ſuffer the tenant to be by ſo much time behind of payment

to me of the same rent: for the payment of my tenant to another to whom he ought not to pay, is no disseisin to me, nor shall not put me out of my rent, without my will and election; for howbeit that I may have assise against such a taker, yet this is at my election if I will take him as my disseisor or not, so that such descents of rents in grosse ne putteth not out the Lords from their distresse, but that at each time they may well distraine for the rent behind: And in this case if after the decease of him that so wrongfully took the rent, I grant by my deed the services to another, & the tenant attourneth, his is good enough, and the services by such grant and attournment, incontinent be in the grantee, &c. but otherwise it is where the rent is parcell of the Mannor, and the disseisor dyeth seised of the whole Mannor, as in the case beforesaid.

Discontinuance.

DIscontinuance is an ancient word in the Law, and hath divers significations, &c. but as to one intent it hath such a signification, that is to say, where a man hath aliened to another certaine lands or tenements and dieth, and another hath right to have the same lands or tenements, but he ne may enter in them, because of such alienation, &c. As if an Abbot be seised of certaine lands and tenements in fee, and he alieneth the same lands and tenements to another in fee, or in taile, or for terme of life, and the Abbot dieth, his successor may not enter in the same lands & tenements, howbeit that he have right to have them as in the right of the house, but he is put to his action to recover the same lands or tenements which is called a Writ de ingressu sine assensu capituli. And

And if a man be ſeiſed of land as in the right of his wife, &c. and therof infeoffeth another, &c. and dieth the wife may not enter, but ſhe is put unto her action, the which is called Cui in vita. See ſtat. 32. H. 8. c. 28. Leaſes.

Alſo, if tenant in the taile of certaine land thereof infeoffe another, &c and hath iſſue and dieth, &c his iſſue may not enter in the land, howbeit that he hath right and title to that, but that he is put to his action that is called a Formedon in the deſcender.

Alſo, if there be tenant in taile, and the reverſion is to the donor and to his heires, if the tenant make a feoffment, &c. and dieth without iſſue, he in the reverſion may not enter, but is put to his action of Formedon in the reverter. And in the ſame manner it is, where there is tenant in the taile of certaine land where the remainder is to another in the taile, or to another in fee, if the tenant in the taile alieneth in fee, or in fee taile, &c. and after dieth without iſſue, they in the remainder may not enter, but be put to their writ of Formedon in the remainder, &c. and for this, that by force of ſuch feoffment, and ſuch alienations in the caſes aforeſaid, and in like caſes thoſe which have title and right after the death of ſuch a Feoffor, or alienor, may not enter, but be put to their actions ut ſupra. therefore ſuch feoffments and alienations be called diſcontinuances.

Alſo, if a tenant in the taile be diſſeiſed, and he releaſeth by his deed to the diſſeiſor, and to his heires all the right that he hath in the ſame land, this is no diſcontinuance for this, that nothing of right paſſeth to the diſſeiſor but for terme of life of the tenant in the taile that made the re-

leale, &c. But by the feoffment of tenant in the taile a fee simple passeth by the same feoffment by force of livery of seisin, &c. but by force of a release, nothing passeth but the right he may lawfully and rightfully release without hurt or damage to other persons which thereto have right after his decease &c and so it is a great diversity between a feoffment of the tenant in the taile, and a release of the tenant in the taile. But it is said, that if tenant in the taile in this case release to the disseisor, and bindeth him and his heires to warrantize, &c. and dieth, & this warranty descendeth to his issue, then that is a discontinuance because of warrantize, &c. But if a man have issue a son by one wife which dyeth, and after he taketh another wife, and the tenements be given to him and his second wife, and to the heires of their two bodies ingendred, and they have issue another son, then the second wife dieth, and after the tenant in the taile is disseised, and he releaseth to his disseisor all his right, &c. and bindeth him and his heirs unto warrantize, and dieth, this is no discontinuance to the issue in the taile by the second wife but he may well enter, &c. for this, that the warrantize descended to his elder brother that his father had by his first wife.

In the same manner where the tenements be descendable to the yonger son after the custome of borough English, which be intailed, &c. & the tenant in the tail hath issue two sons & is disseised, & he releaseth to his disseisor all his right with warranty & dyeth, the yonger son may enter upon the disseisor notwithstanding the warrantize, for this, that the warrantize descendeth to the

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elder ſon, for allway the warrantize deſcendeth, &c. to him that is heire by the common law.

Alſo, if an Abbot be diſſeiſed, and he releaſeth to the diſſeiſor with warrantize, this is no diſcontinuance to his ſucceſſor, for this, that nothing paſſeth by this releaſe but the right that he hath during the time that he is Abbot, and this warrantize is expired by his priuation or by his death.

Alſo, if tenant in the taile be ſeiſed of certaine land, and he letteth the ſame land for terme of yeares, by force of which leaſe the leſſee is in poſſeſſion, in which poſſeſſion the tenant in the taile by his deed releaſeth all his right that he hath in the ſame land to the Leſſee and to his heires for ever, this is no diſcontinuance, but after the deceaſe of the tenant in the taile his ſiſne may well enter, for this, that by ſuch releaſe nothing paſſeth but for terme of life of the tenant in the taile. In the ſame manner if the tenant in the taile confirme the eſtate of the leſſee for terme of certaine yeares to have and to hold to him and to his heires, that is no diſcontinuance, for this, that nothing paſſeth by ſuch confirmation, but the eſtate that the tenant in the taile had for terme of his life.

Alſo, if a tenant in the taile by his deed grant to another all his eſtate that he hath in the tenements entailed to him, to have and to hold all his eſtate to the other & to his heirs for ever, and deliuereth ſeiſin accordingly. In this caſe the tenant to whom the alienation was made, hath no other eſtate but for terme of life of the tenant in taile, and ſo it may well be proued that the tenant in the taile may not grant ne alien ne

make any rightfull estate of the franktenement to another person but for terme of his own life, &c. For if I give certaine land in the taile to a man, saving a reversion to me, and after the tenant in the taile enfeoffeth another in fee, the feoffee hath no right estate in the tenements, for two causes. One is, for that that by such feoffment my reversion is discontinued, which is a wrong act and not a rightfull act. Another cause is, if the tenant die, and his issue sueth a writ of Formedon against the feoffee, the writ shall say, and also the declaration, that the feoffee wrongfully him dekored, therefore if wrongfully he him dekored, he had no right estate.

Also, if land be let to a man for terme of his life, the remainder to another in the taile, if he in the remainder will grant his remainder to another in fee by his deed, and the tenant for terme of life attourneth, this is no discontinuance of the remainder.

Also if a man be tenant in the tail of an advowson in grosse or of common in grosse, if he by his deed will grant the advowson or the common to another in fee, this is no discontinuance, for in such case the grantee hath no estate but for terme of life of the tenant in the taile that made this grant, &c. Note well, that such things as passe by way of grant made by deed, made in the countrey, &c. such grant maketh no discontinuance, as in the case aforesaid, and other like cases, &c. And howbeit that such be granted in fee, by fine levied in the Kings Court, &c. yet they make no discontinuance, &c.

Also, if a man be seised in the taile of lands devisable by testament, &c. and he deviseth it to another

another in fee, and dieth, and the other entreth, this is no diſcontinuance, for this, that no diſcontinuance was made in the life of the tenant in the taile, &c.

Alſo, if an Abbot have a reverſion, or a rent ſervice, or a rent charge, and will grant that reverſion, rent ſervice, or rent charge to another in fee, and the tenant attourneth, &c. this is no diſcontinuance. In the ſame manner it is where an Abbot is ſeiſed of an advowſon, or of ſuch things that paſſe by way of grant without livery of ſeiſin, &c.

Alſo, if there be Grandfather Tenant in the taile, father and ſon, and the Grandfather is diſſeiſed by the father, & the father maketh a feoffment in fee without warrantize and dieth, and after the grandfather dieth, the ſon may well enter upon the feoffee, for this, that this was no diſcontinuance, inſomuch that the father was not ſeiſed by force of the taile at the time of the Feoffment, &c. but was ſeiſed in Fee by diſſeiſin made to the Grandfather.

Alſo, if a woman inheritrix have an husband within age, which maketh a feoffment of the tenements of the wife, and dieth, it hath been queſtioned if the wife may enter or not: And it ſeemeth to ſome men that the entry of the wife after the death of her husband ſhall be lawfull in this caſe; for when her husband made ſuch a feoffment, &c. he might well enter notwithſtanding ſuch feoffment during the coverture, and he might not enter in his own right, but in the right of his wife, &c. Ergo ſuch right that he had to enter in the right of his wife & that right of entry abideth to the wife, &c. after his deceaſe

And it hath been said, that if two Joyntenants being within age, make a feoffment in fee, and one of the children dieth, and the other surviveth, insomuch that both children might enter joyntly in their lives, this right of entry groweth all to him that survives, and so he may enter into the whole, &c

Also, the heire of the husband that made the feoffment within age may not enter, for this, that no right descendeth to such an heire in the case aforesaid, for this, that the husband had never any thing but in the right of the wife. And also when a child maketh a feoffment being within age this shall never grieve nor hurt him, but that he may well enter &c. and this should be against reason, that such a feoffment made by him that was not able to make such a feoffment shall grieve or hurt other, to toll other of their entries, &c And for these causes it seemeth to some, that after the death of such a husband so being within age at the time of the feoffment, &c: that his wife may well enter, &c.

Also, if a woman inheritrix taketh an husband and hath issue a son, and the husband dieth, and she taketh another husband, and the second husband letteth the land that he hath in the right of his wife to another for terme of his life, and after the wife dieth, and after the tenant for term of life surrendreth his estate to the second husband, &c Inquire if the son of the wife may enter or not, in this case upon the second husband during the life of the tenant for terme of life. But it is cleere law in this case, that after the death of the tenant for terme of life, the son of the wife may well enter, for this, that the discontinuance

tinuance that was made all only for terme of life is determined by the death of the same tenant for terme of life.

Also, if the parson or vicar of a Church alien certaine lands or tenements parcell of his glebe, &c. to another in fee and dieth, or resigneth, &c his successor may well enter, notwithstanding such alienation, as it is said in a note, Anno 2. H. 4. Termino Mich. quæ sic incipit. Nota quod dictum fuit pro lege, In a writ of Account brought by the Master of a Colledge, that if a parson or a vicar grant certaine land that is of the right of his Church to another, and dieth, or changeth, that his successor may enter: And I trow the cause is for this, that the parson or vicar that is seised, &c. in right of the Church hath no right of the fee simple in the tenements, but the right of the fee simple abideth to another person: And for this cause his successor may well enter, notwithstanding such alienation, &c. for a Bishop may have a writ of right of tenements of right of his Bishoprick, for this, that the right of fee simple abideth in him and in his chapter. And a Deane may have a writ of right, &c. for this, that the right abideth in him and in his chapter. And an Abbot may have a writ of right, for that the right abideth in him and in his Covent, & sic de aliis casibus concimilibus, &c. but a parson or a vicar may not have a writ of right, &c. but the highest writ that they may have is a writ de jur' utrum, the which is a great proofe, that the right of fee simple is in abeiance, that is to say, all only in the remembrance, intendment, and consideration of the Law: for me seemeth that such a thing & such a right that is said in divers books

to

to be in abeiance, is as much to say in latine, talis res, vel tale rectum quæ vel qd' non est in homine adtunc superstite sed tantummodo est & consistit in consideratione & intelligentia legis, &c. & quidam alii dixerunt talem rem, aut tale rectum tore in nubibus, &c. but I suppose that they understand these words, in nubibus, &c. as I have said before.

Also, if a Parson of a Church die, now the franktenement of the glebe of the parsonage is in no man, during the time that the Parsonage is void, but is in abeiance, that is to say, in consideration and intelligence of the Law, till another be made Parson of the same Church, and immediately when another is Parson, the franktenement in deed is to him as successor.

Also, some men peradventure will argue and say, that inasmuch that the parson with the assent of the Patron and Ordinary, may grant a rent charge out of the glebe of his parsonage in fee, and so charge the glebe of his parsonage perpetually, Ergo they have fee simple, or two or one of them hath fee simple at the least, &c. so thus it may be answered, that it is a principle in Law that of every land there is a fee simple in some man, or else the fee simple is in abeiance, &c. And another principle is, that every land of fee simple may be charged with a rent charge in fee, by one way or by another, &c. and when such rent is granted by the deed of the parson, the patron and the ordinary in fee, none shall have no prejudice nor losse by force of such grant, but the grantors in their lives, and the heire of the patron, and successor of the Ordinary after their decease, and after such charge if the Parson die, his successor

may

may not come to the ſame Church to be Parſon of the ſame Church by the Law, but by preſentment of the patron, and admiſſion and inſtitution of the Ordinary, &c. And for this cauſe it behoveth that the ſucceſſor hold him content and agreed with that which his Patron and Ordinary lawfully have done before. But the cauſe that ſuch rent charge is gone, is, for that they which have entries in the ſaid Church, that is to ſay, the Patron after the law temporall, & the Ordinary after the law ſpirituall, were aſſented as parties unto ſuch a charge, &c. and this ſeemeth the very cauſe that ſuch gifts may be charged in perpetuity, &c. See Stat. 31. El. z. c. 10.

Alſo if a Biſhop alien lands which be parcell of his Biſhoprick and dieth, this is a diſcontinuance to his ſucceſſor for this, that he may not enter, but is put to his writ de ingreſſu ſine aſſenſu capituli, &c. See Stat. 1. Eliz.

Alſo, if a Deane alien land, parcell of his deanry, and dieth his ſucceſſor may not enter, but he may have a writ de ingreſſu ſine aſſenſu capituli, &c. See Stat. 13. Eliz. c. 10.

But if the Deane and the Chapter have land to them and to their ſucceſſors in common, &c. Howbeit that the Deane alien ſuch lands, his ſucceſſors may well enter, for that the franktenement at the time of the alienation was as well in the Chapter, as in the Deane. But where the deane is ſole ſeiſed as in right of his deanry, then ſuch alienation is diſcontinuance to his ſucceſſor, as it is aforeſaid.

Alſo, ſome men will argue and ſay, that if an Abbot and his Covent be ſeiſed in their demean as of fee, of certaine land to them and to their ſucceſ-

succeſſors, &c. and the Abbot without aſſent of his Covent alieneth the ſame land unto another, and dieth, this is a diſcontinuance to his ſucceſſors, &c. and by the ſame will ſay, that where a Deane and a Chapter is ſeiſed of certaine land to them and to their ſucceſſors, if the Dean alien the ſame lands, &c. this ſhall be a diſcontinuance to his ſucceſſors, ſo that his ſucceſſor may not enter, &c. To this may be anſwered, that there is a great diverſity between the ſaid two caſes; for when an Abbot and the Covent be ſeiſed, &c. yet if they be diſſeiſed, the Abbot ſhall have aſſiſe in his own name, without the naming of his Covent, &c. And if a man may or will ſue a Præcipe quod reddat of the ſame lands when they be in the hands of the Abbot and his Covent, it behoveth that ſuch an action be ſued againſt the Abbot only without naming of the Covent, &c. for that all they be dead perſons in the Law, ſave only the Abbot that is ſoveraigne, &c. & this is becauſe of the ſoveraignty, &c for elſe he ſhould be as the other Monks of the Covent, &c. But the Deane and the Chapter be no dead perſons in the Law, &c. For each of them may have an action by himſelfe in divers caſes, and of ſuch lands or tenements which the Deane and Chapter have in common, &c. if they be diſſeiſed, that the Deane and the Chapter ſhall have aſſiſe, and not the Deane alone, and if another will have an action reall of ſuch lands or tenements againſt the Deane, &c. it behoveth him to ſue againſt the Deane and Chapter, and not againſt the Deane alone, &c. and ſo appeareth great diverſity between theſe two caſes.

Alſo, if the Maſter of an Hoſpitall diſcontinue certaine

certaine land of his Hospitall, his successor may not enter, but he is put unto his writ, De ingressu sine assensu confratrum & sororum suarum. And all such writs do plainly appeare in the Register, &c.

Remitter.

REmitter is an ancient terme in the Law, and it is where a man hath two Titles to lands or Tenements, that is to say, one of an elder Title, and another of a latter Title, and he commeth to the land by the latter Title, yet the Law adjudgeth him to be in by force of the elder Title, for that the elder Title is the more sure Title, and the more worthy Title and then when a man is judged in by force of the more elder Title, this is unto him said a Remitter, for this, that the Law shall admit him to be in the land by the elder Title: as if the tenant in the taile discontinue the taile, & after he disseiseth the discontinuee, and so dieth seised, whereby the Tenements descend to his issue, or to his cosin inheritable by force of the taile: in this case this is to him to whom the tenements descend which had right by force of the taile, a remitter in the taile, for that, that the Law shall put and adjudge him to be in by force of the taile, which is his elder Title: for if he shall be in by force of descent, then the discontinuee may have a writ of Entry upon the disseisin in the Per against him, and recover the tenements and his damages; but inasmuch that he is in by force of the taile, the title and the interest of the discontinuee is all utterly annulled and defeated, &c.

Also, if tenant in the taile infeoffes in fee his son or his cosin inheritable by force of the taile, the

the which son or sonn at the time of the feoffment is within age, and after the tenant in the taile dieth, and he to whom the feoffment was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffment is made: For howbeit that during the life of the tenant in the taile that made the feoffment, such heire shall be adjudged in by force of the feoffment, yet after the death of the tenant in the taile the heire shall be adjudged in by force of the taile, &c. and not by force of the feoffment, and though that such an heire was of full age at the time of the death of the tenant in the taile that made the feoffment, this maketh no matter, if the heire were within age at the time of the feoffment made to him. And if such an heire being within age at the time of the feoffment commeth to full age, living the tenant that made the feoffment, and so being of full age, he chargeth by his deed the same land with a common of pasture, or with a rent charge and after the tenant in the taile dieth: Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by another estate in the Land, than he was at the time of the charge made, insomuch that he is in his remitter by force of the taile, and so the estate that he had at the time of the charge is utterly defeated, &c.

Also, a principall cause why such an heire in the cases aforesaid, and other cases semblable shall be said in his Remitter, is for this, that there is no person against whom that he may sue his writ of Formedon, for against himselfe he may not sue, and he may not sue against any other, for no other is tenant in the franktenement,

and

and for that cause the Law adjudgeth him in his Remitter, that is to say, in such plight, as he had lawfully recovered the same land against another.

Also, if land be tailed to a man and his wife, and to the heires of their two bodies engendred, the which hath issue a daughter, and the wife dyeth, and the husband taketh another, and hath issue another daughter, and discontinueth the taile, and after he disseiseth the discontinuee, and so dyeth seised, now the Land descendeth to the two daughters: In this case as to the elder daughter that is inheritable, this is a Remitter but of the halfe, and as to the other halfe, she is put to her action of Formedon against her sister, for in this case the two sisters be not tenants in parcenary, but be tenants in common, for this, that they be in by divers titles, for the one sister is in her Remitter by force of the taile as to that that unto her belongeth: and the other sister is in, as to that that belongeth to her in Fee simple by the descent of her father. In the same manner it is if the tenant in the taile infeoffe his heire apparant in the taile, the heire being within age, and another Joyntenant in fee, and the tenant in the taile dieth. now the heire in the taile is in the Remitter, as to the halfe, and as to the other halfe he is put to his writ of Formedon, &c.

Also, if a tenant in the taile infeoffs his heire apparant, the heire being at full age at the time of the feoffment, and after the tenant in the taile dieth, this is no Remitter to the heire, for this, that it was his own folly. that he being of full age would take such feoffment, &c. But such folly

folly may not be adjudged in the heire being within age at the time of the feoffment, &c.

Also, if a tenant in the taile infeoffe a woman in fee, and dieth, and his issue within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this, that the husband and the wife be but one person in the Law: And in that case the husband may not sue a writ of Formedon, unlesse he will sue against himselfe, the which shall be inconvenient, and for that the Law judgeth the heire in his Remitter, for this, that no folly may be arretted to him being within age at the time of the espousals, &c. And if the heire be in his Remitter by force of the taile, it followeth by reason that the wife hath nothing, &c. for insomuch that the husband & the wife be but one person, the land may not be severed by halfes, and for such cause the Husband is in his Remitter of the whole. But otherwise it is, if such an heire be of full age at the time of the espousals, then the heire hath nothing but in the right of his wife.

Also, if a woman seised of certaine land in fee taketh an husband, the which alieneth the same Land to another in fee, and the Alienee letteth the same land to the husband and the wife for terme of their two lives, saving the reversion to the lessor and to the heire, in this case the wife is in her Remitter, and she is seised indeed in her demesne as in fee as she was before, for this, that the taking of estate shall be adjudged in the Law the deed of the husband and not the deed of the wife, so that no folly may be judged in the wife that is covert in such case: And in this case the lessor hath nothing in the reversion, for

this,

this that the wife is seised in Fee. But in this case, if the Lessor will sue an action of Waste against the husband & his wife, for this, that the husband hath not Waste, the husband may not bar the Lessor for to shew this, that the taking of estate made unto him and to his wife, made a Remitter to his wife, for this, that the husband is stopped to say this against his feoffment and own reprisell of estate for terme of life to him and his wife, & yet the Lessor hath no reversion, for that the fee simple is in the wife. So a man may see a matter in this case, that a man shall be stopped by a matter in deed, though no writing by deed indented, or otherwise be thereof made. But if in an Action of Waste the husband make default at the grand distresse, and the wife prayeth to be received, and is received, she shall well shew all the matter, and how she is in her Remitter, and shall bar the Lessor of his action: For in every case that the wife is received for default of her husband, she shall plead, and have the same advantage in pleading, as she were a woman sole. And howbeit that the Alienee made no lease to the husband and his wife by deed indented, yet this is a Remitter to the wife, and though the Alienee yelded the same Land to the husband and his wife by fine for terme of their lives, yet this is a Remitter to the wife, for this, that the wife covert that taketh estate by fine shall not be examined by the Justices. And here note well, that when any thing shall passe from the wife that is covert of husband by force of a fine, as the husband and wife make conusance of right to another, &c. or make a grant to yeild to another, or release by

a fine to another, & ſic de ſimilibus, where the right of the wife paſſeth from the wife by force of the ſame the wife in all ſuch caſes ſhall be examined before that the fine be accepted And ſuch fines conclude ſuch wives covert for ever. But where nothing is moved in the fine, but all only that the husband and the wife take eſtate by force of the ſame fine, this ſhall not conclude the wife for this, that in ſuch caſe ſhe ſhall never be examined

Alſo, if tenant in the taile diſcontinue in the taile, and hath a daughter and dieth. and the daughter being of full age taketh an husband, and the diſcontinuee maketh a leaſe of this to the husband and his wife for terme of their lives, this is a Remitter in deed to the wife, and the wife is in by force of the taile, Cauſa qua ſupra.

Alſo, if land be given to the husband and his wife, to have and to hold to them and to the heirs of their two bodies begotten, and after the husband alieneth the land in fee, and taketh againe an eſtate to him and to his wife for terme of their two lives In this caſe this is a Remitter in deed to the husband and the wife, maugre the husband; for it may not be a Remitter to the wife, except it be a Remitter to the husband for this, that the husband and his wife be but one perſon in the law, though that the husband is ſtopped to claime this to be a Remitter in him againſt his alienation and his own reprisall, as is aforeſaid.

Alſo if land be given to a woman in the taile, the remainder to another in the taile, the remainder to the third in the taile, the remainder to the fourth in fee, and the wife taketh an husband,

and

and the husband discontinueth the land of his wife, by this discontinuance all the remainders be discontinued, for if the wife die without ſiſſue, they in remainder ſhall have no remedy, but to ſue their writs of Formedon in the remainder when they come to their time, &c. But if after ſuch diſcontinuance, eſtate be made to the husband and his wife for terme of their two lives, or for terme of another's life, or another eſtate, &c. for this, that this is a Remitter to the wife, this is a Remitter to all thoſe in the remainder, &c. For after this that the wife, that is in her Remitter, dieth without iſſue they in the remainder may enter, &c. without an action or ſuit, &c. In the ſame manner it is of them which have the reverſion after ſuch eſtate, &c.

Wife. If a man let an houſe to a woman for terme of her life, leaving the reverſion to the leſſor, and after one ſueth a faine and falſe action againſt the Woman, and recovereth the houſe againſt her by default, ſo that the woman may have againſt him a writ of Quod ei deforceat, after the Statute of Weſtminſter the ſecond, cha. 4. now is the reverſion of the leſſor diſcontinued, ſo that he may not have an action of Waſte. But in this caſe if the woman take an husband and he that recovereth letteth the houſe to the husband and his wife for terme of their two lives, the wife is in her Remitter by force of the firſt Leaſe. And if the husband and the wife make Waſte, the firſt leſſor ſhall have againſt him a writ of waſte for this, that inſomuch that the wife is in her Remitter, he is remitted to his reverſion. But it ſeemeth in this caſe, if he that here commeth by the falſe Action, will bring an-

other Writ of Waste against the husband and his wife, the husband hath no remedy against him, but to make default at the great distresse, &c. and to cause the wife to be received, and to plead the matter against the second Lessor, and to shew that the action by which he recovered was false and faigned in the Law, and so the wife may bar, &c.

Also, if the husband discontinue the land of his wife, and after taketh estate to him and to his wife, and a third man for terme of their lives, or in fee, this is a Remitter to the woman but as to the moity. And as for the other moity it behoveth her after the death of her husband to sue a Cui in vita.

Also, if the husband discontinue the land of his wife, and go over the Sea, and the discontinuee let the same land to the woman for terme of life, and deliver to her seisin, and after the husband commeth and agreeth to that livery of seisin, this is a Remitter to the woman, and yet if the woman had been sole at the time of her Lease made to her, this should be to her no Remitter, but insomuch as she was covert baron at the time of the Lease, and the livery of seisin made to her, though that she only take the livery of seisin, this was a Remitter to her, because a woman covert shall be adjudged as an Infant within age in such case, &c. Inquire in this case if the husband when he commeth againe will disagree to the lease and livery of seisin made to his wife in his absence, if this shall put the woman from her Remitter.

Also, if the husband discontinue the tenements of his wife, and the discontinuee is disseised, and after

after the diſſeiſor letteth the ſaid tenements to the husband and his wife for terme of life, this is a Remitter to the wife: but if the husband and the wife were of covin or conſent that the diſſeiſin ſhould be made, then it is no Remitter to the wife, becauſe ſhe is a diſſeiſoreſſe. But if the husband were of covin and conſent to the diſſeiſin and not the wife, then ſuch leaſe made to the wife is a Remitter, becauſe that no default was in the wife.

Alſo, if ſuch a diſcontinues had made eſtate of freehold to the husband and the wife by Indenture upon condition, &c. reſerving to the diſcontinues a certaine rent, and for default of payment a reentry, and becauſe that the rent is behind, the diſcontinues entreth, of this rent the woman ſhall have Aſſiſe of Novel diſſeiſin, after the death of her husband againſt the diſcontinues, becauſe that the condition was wholly annulled, inſomuch as the woman was in her remitter yet the husband with his wife could not have aſſiſe, becauſe the husband is ſtopped.

Alſo, if the husband diſcontinue the Tenements of his wife, and taketh eſtate againe for terme of his life, the remainder after his deceaſe to his wife for terme of her life, in this caſe this is no Remitter to the wife during the life of her husband, becauſe that during the life of the husband, the wife hath nothing in the Freehold; but if in this caſe the wife ouſter the husband, this is a Remitter to the wife, becauſe that a Freehold in Law is fallen upon her, maugre her will, and inſomuch that ſhe can have no action againſt no other perſon, and againſt her ſelfe ſhe can have no action, therefore

she is in her Remitter; for in this case though that the woman enter not into the tenements, yet a stranger that hath cause to have action may sue his action against the woman of the same tenements, because she is Tenant in Law, though she be not Tenant in deed, for Tenant of franktenement in deed is he, that if he be disseised of franktenement, may have Assise, but the Tenant in the Law before his entry shall have no assise: and if a man seised in fee of certaine land hath issue a son which taketh a wife, and the father dieth seised, and after the son dieth before any entry made by him into the land, the wife of the son shall be endowed in the land, and yet he had no franktenement in deed, but he had a fee and a franktenement in law. And note well, that a Præcipe quod reddat may bene well maintained against him that hath the Franktenement in Law, as against him that hath Franktenement in deed.

Also, if a tenant in the taile hath issue two sons at full age, and he letteth the tailed land to the elder son for terme of his life, the remainder to the younger son for terme of his life, and after the tenant in the taile dyeth: In this case the elder son is not in his remitter, because he took estate of his father, but if the elder son die without issue of his body, then this is a remitter of the younger brother, because he is heire in the taile, and a franktenement in law is fallen upon him by force of the remainder, and there is none against whom he may sue his action &c. In the same manner it is where a man is disseised, and the disseisor dyeth thereof seised, and the tenements descend to his heire, and the heire of the

disseisor

disseisee maketh a lease to a man of the said tenements for terme of life, the remainder to the disseisee for terme of life, or in taile, or in fee, and the Tenant for terme of life dieth, now this is a Remitter to the disseisee, &c. Cause qua supra.

Also, if a tenant in the taile infeoffe his son and another of the tailed Land in fee, and livery of seisin is made to the other according to the deed, the son not knowing thereof, nor agreeing to the Feoffment, and after he that took the livery of seisin dieth, and the son occupieth not the Land, nor taketh any profit of the Land during the life of his father, and after the Father dieth, now this is a Remitter to the son, because the freehold is fallen upon him by the survivor, and no default was in him because he never agreed, &c. in the life of his Father, and there is none against whom he may pursue his writ of Formedon, &c. For if a man be disseised of certaine Land, and the disseisor maketh a deed of feoffment, whereof he infeoffeth B C. and D. and the livery of seisin is made to B and C. but D. was not at the Livery of seisin nor never agreed to the feoffment, nor never would take the profits, &c. And after B and C. die, and D. overliveth them and the disseisee bringeth his writ sur disseisin in the Per, against the same D. he shall shew all the matter, and how that he never agreed to the feoffment, and so he shall discharge himselfe of damages, so that the demandant shall recover no damage against him, though that he be tenant of the franktenement of the land And yet the Statute of Glocester will, that the disseisee shall recover damage in a writ of Entre, grounded upon the Novel disseisin, against him

that is found tenant. And this is a proofe in the other case, that inasmuch as the issue in the taile commeth to the franktenement not by his deed, nor by his agreement, but after the death of his father, this is a Remitter to him, inasmuch that he can sue an action of Formedon against no other person.

Also, if an Abbot alien the land of his house to another in fee, and the Alienee by his deed chargeth the land with a rent charge in fee, and after the alienee infeoffeth the Abbot with licence, to have and to hold to the Abbot and his successors for ever, and after the Abbot dieth, and another is chosen and made Abbot: In this case the Abbot that is successor, and his Covent be in their remitter, and shall hold the land discharged, because that the same Abbot cannot have an Action by his Writ of Entre sine assensu Capituli of the same lands against no other person. In the same manner it is where a Bishop or Deane, or other such person alien, &c. without assent, &c. And after the Bishop taketh estate againe of the same land by licence to him, and to his successors, and after the Bishop dieth, his successor is in his Remitter as in the right of his Church, and shall defeat the charge, &c. Causa quâ supra.

Also, if a man sue a taile Action against tenant in the taile, as if a man will sue against him a Writ of Entre in the Post, supposing by his Writ that the tenant in the taile had not his entry but by A. of B. that disseised the Grandfather of the demandant, and that is taile, and he recovereth against the tenant in the taile by default, and sueth execution, and after the tenant in

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the taile dieth, his issue may have a writ of Formedon against him that recovered: And if he will plead the recovery against the tenant in the taile, the issue may say, that the said A. of B. disseised not the Grandfather of him that recovered in such manner, as his writ supposeth, and so he shall falsifie his recovery. Also, suppose that that was true, that the said A of B. disseised the Grandfather of the demandant that recovered, and that after the disseisin the demandant or his Father, or his Grandfather, by a deed had released to the tenant in the taile, all the right that he had in the land, &c And this notwithstanding he sueth his writ of Entre in the Post against the tenant in the taile, in the manner as is aforesaid, and the tenant in the taile pleadeth to him, that the said A. of B. disseised not his Grandfather, as his writ supposeth: and upon this they be at issue, and the issue is found for the demandant, whereby he hath judgement to recover, and sueth execution, and after the tenant in the taile dieth, his issue may have a writ of Formedon against him that recovered. And if he will plead the recovery by action tried against his Father tenant in the taile, then he may shew and plead the release made to his Father, and so the action that was sued was faint in the Law, &c.

And it seemeth that faint action is as much to say in English, as fained action, that is to say, such action, that though the words of his writ be true, yet for certaine causes he hath no cause nor title in the Law to recover by the same Action. And false action is where the words of the writ be false: And in the two cases beforesaid,

said, if the case were such that after such a recovery and execution thereof made, the tenant in the tail had disseised him that recovered, and thereof died seised, whereby the land also descended unto his issue, this is a Remitter to the issue, and the issue is in by force of the tail: And for that cause I have put these two cases aforesaid, to informe thee (my son) that the issue in the tail, by force of a descent made to him after a recovery and execution thereof made against his ancestor, may be as well in his Remitter, as he should by descent made to him after a discontinuance made by the ancestor of the tailed land by feoffment in the country, or otherwise.

Also, in the same case aforesaid, if the case were such that after the demandant hath judgment to recover against the tenant in tail, and the same tenant in the tail died before any execution had against him, whereby the tenements descend to his issue, and he that recovered sued a Scire facias to have execution of the judgement against the issue in the tail, the issue shall plead the matter, as before is said, and so shall prove that the recovery was false or faint in the law, and so shall bar him to have execution of the judgement, &c.

Also, if the tenant in the tail discontinue the tail and die, and his issue bringeth a writ of Formedon against the discontinuee being tenant of the freehold of the land, and the discontinuee pleadeth that he is not tenant, but otherwise disclaimeth from the tenancy in the land: In this case the judgement shall be, that the tenant go without day, and after such judgement, the issue in the tail that is demandant may well enter

ter in the land, notwithstanding the discontinuance. And by such entry he shall be adjudged in his Remitter, and the cause is, because that if any man sue a Præcipe quod reddat against any tenant of freehold, in which action the demandant shall not recover damages, and the tenant pleadeth Nontenure, or otherwise disclaimeth in the tenancy, the demandant may not aver in the writ, that he is tenant as the writ supposeth. And for that cause the demandant after that the judgment is given, that the tenant shall go without day, may enter into the tenements demanded, the which shall be as great advantage to him in the Law, as if he had judgement to recover against the tenant. And by such entry he is in the Remitter by force of the taile: but where the demandant recovereth damages against the tenant, there the demandant may aver that he is tenant as the writ supposeth, and that for the advantage of the demandant for to recover his damages, or else he shall not recover his damages, the which damages be or were given him by the Law.

Also, if a man be disseised, and the disseisor dye, his heire being in by his descent, now the entry of the disseisee is taken away. And if the disseisee bring his writ of Entre upon the disseisin in the Per against the heire, and the heire disclaimeth in the tenancy, &c. the demandant may aver his writ, that he is tenant as the writ supposeth, if he will, for to recover his damages. But yet if he will leave the averment, &c. he may lawfully enter into the land, because of the disclaimer, notwithstanding that his entry before was taken away. And that was adjudged before

fore my Master Sir Robert Danby, late chiefe Justice of the Common Pleas, and his companions, 5. E. fol. 1. & 45.

Also, where the entry of a man is lawfull, though that he take estate to him when he is of full age for terme of life, or in tails, or in fee, this is a Remitter to him, if such taking of estate be not by deed indented, or by matter of record that shall conclude or stop him: for if a man be disseised, and thereof taketh estate of the disseisor without deed, or by deed Poll, that is a good Remitter of the disseisee.

Also, if a man let land for terme of life to another, which alieneth to another in fee, and the Alienor maketh estate to the Lessor, this is a remitter to the Lessor because his entry was lawfull.

Also, if a man be disseised, and the disseisor letteth the land to the disseisee by deed Poll, or without deed for terme of yeares, whereby the disseisee entreth, this entry is a Remitter to the disseisee: for in such case where the entry of a man is lawfull, and a lease is made to him, though that he claime by words in the countrey, that he hath estate by force of such Lease, or saith openly that he claimeth nothing in the land, but by force of such Lease, yet this is a Remitter to him, for such claime in the countrey is nothing to purpose: but if he claime in a Court of Record, that he hath estate but by force of such lease and not otherwise, then he is concluded, &c.

Also, if two Joyntenants seised of certaine land in fee, the one being of full age, the other within age be disseised, and the disseisor dieth seised,

ſed, and his iſſue entreth, the one of the joyntenants being then within age, and after that he commeth to full age, the heire of the diſſeiſor letteth the land to the ſame Joyntenants for terme of their lives, this is a Remitter as to the halfe to him that was within age, becauſe that he is ſeiſed of the moity that belongeth to him in Fee, becauſe his entry was lawfull. But the other Joyntenant hath in the other halfe but eſtate for terme of life by force of the leaſe, becauſe his entry was taken away, &c.

Warranty.

IT is commonly ſaid, that there be three manner of Warranties; that is to ſay: warranty lineall, warranty collaterall, and warranty that beginneth by diſſeiſin. And it is to wit, that before the ſtatuts of Glouceſter, all warranties which deſcended to them which were heires to them that made the warranty, were bars to the ſame heires to demand any lands or tenements againſt thoſe warranties except the warranties that began by diſſeiſin, for ſuch warranty was neuer bar to the heire, becauſe the warranty began by wrong, that is to ſay, by diſſeiſin.

Warranty that beginneth by diſſeiſin is in ſuch forme: As where there is father and ſon, and the ſon doth purchaſe land, &c. and letteth the ſame land to his father for terme of yeares, and the father by his deed thereof infeoffeth another in fee, and bindeth him and his heires to warranty, and if the father die, whereby the warranty deſcendeth to his ſon, this warranty ſhall not bar the ſon, for notwithſtanding this warranty, the ſon may well enter into

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the land, or have an affise against the alienee, if he will, because the warranty began by disseisin: for when the father that had no estate but for terme of yeares made a feoffment in fee, this was a disseisin to the son of the franktenement that then was in the son. In the same manner it is, if the son let unto the father the land to hold at will, and after the father maketh a feoffment with warranty, &c. And as it is said of the father, so it may be said of every other ancestor, &c.

In the same manner it is if tenant by Elegit, tenant by statute Merchant, or tenant by statute Staple, maketh a Feoffment in Fee with warranty, &c. this shall not bar the heire that ought to have the land, because that such warranties begin by disseisin.

Also, if a warden in chivalry, or warden in socage, make a feoffment in fee, in fee taile, or for terme of life with warranty, &c. such warranties be no barre to the heires to whom the land shall descend, because that they begin by disseisin.

Also, if the father and the son purchase certaine lands or tenements, to have and to hold to them joyntly, &c. and after the father alieneth the whole to another, and bindeth him and his heirs to warranty, &c. and after the father dieth, this warranty shall not bar the son of the moity that belongeth unto him of the same tenement, because that as to the moity that belonged to the son the warranty began by disseisin.

Also, if B. of B. be seised of a meese, and F. of G. that hath no right to enter into the same meese, claiming to hold the same meese to him and to his heires, enter into the same meese, but B. of B. then is continually dwelling in the same

same meale, in this case the possession of the franketenement shall be alwey adjudged in A. of B. and not in F. of G. because that in such case where two be in one meale, or in other tenements, and the one claimeth by one title, and the other by another title, the law shall adjudge him in possession that hath right to have the possession of the same tenement. But in the case aforesaid, if F. of G. make a feoffment to sustaine barretors and extortioners in the country for to have maintenance of them of the same meale, by a deed of feoffment with warranty by force of which the said A. of B. dare not dwell in the same meale, but goeth out of the same meale, this warranty beginneth by disseisin, because such a feoffment was cause that the said A. of B. left the possession of the same meale.

Also, if a man that hath no right to enter in anothers tenements, enter into the said tenements, and incontinently maketh a feoffment to other persons by his deed with warranty, and delivereth to them seisin, this warranty beginneth by disseisin, because that the disseisin and the feoffment were made as it were at one time. And that this is Law, ye may see it in a plea, Anno 3. Edwardi tertii in a writ of Formedon in the Reverter, Garr' Fitzh. 28.

Warranty lineall, is where a man seised of certains lands in fee, maketh a Feoffment by his deed to another, and bindeth him and his heires to warranty, and hath issue and dieth, and the warranty discendeth to his issue, this is a lineall warranty: and the cause why this is a lineall warranty, is not because that the warranty discendeth from the father to his heire, but the cause

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is, becauſe that if no ſuch deed with warranty had been made by the father, then the right of the tenements ſhould deſcend to the heire, and the heire ſhould convey the deſcent from the father, &c. For if there be father and ſon, and the ſon purchaſe tenements in fee, and the father diſſeiſeth the ſon thereof, and alieneth it to another in fee by his deed, and by the ſame deed bindeth him and his heirs to warrant the ſame tenements, &c. and the father dieth, now is the ſon barred to have the ſaid tenements, for he may by no ſuit, nor by any other meanes have the ſaid tenements, becauſe of the ſaid warranty. And this is a collaterall warranty, and yet the warranty deſcendeth lineally from the father to the ſon. But becauſe that if no ſuch deed with warranty had been made, the ſon in no manner might convey the title that he hath of the tenements from his father to him, inſomuch that his father had no eſtate nor right in the tenements, therefore ſuch warranty is called collaterall warranty: Inſomuch that he that made the warranty is collaterall to the title of the tenements, and that is as much to ſay, that he to whom the warranty deſcended could not convey the title that he had in the tenements by him that made the warranty in this caſe, if no ſuch warranty had been made.

Alſo if there be grandfather, father and ſon, and the grandfather is diſſeiſed in whole poſſeſſion the father releaſeth by his deed with warranty, &c. and dieth, and after the grandfather dieth, now is the ſon barred of the tenements by the warranty of his father, and this is called lineall warranty, becauſe that if no

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such warranty had been made, the son might not have conveyed the right of the tenements to him, nor shew how he is heire to the Grandfather, but by meanes of the father, &c.

Also, if a man have issue three sons and is disseised, and the elder son releaseth to the disseisor by his deed with warranty, &c. and dieth without issue, and after this the father dieth, this is a lineall warranty to the younger son, because that though the elder son died in the life of the Father, yet by possibility it might be, that he might convey to him the title of the land by his elder brother, if no such warranty had been made: For it might be that after the death of the father, the elder brother entred into the tenements and died without issue, and then the younger son shall convey to him the title of his elder brother. But in this case if the younger son release with a warranty to the disseisor, and dieth without issue, this is a collaterall warranty to the eldest son, because that of such land as was to the other, the elder brother by no possibility might convey to him the title by meane of the younger brother.

Also, if the tenant in the taile hath issue three sons, and discontinue the taile in fee; and the middle son releaseth by his deed to the discontinuee, and bind him and his heirs to warrantize, &c. and after the tenant in the taile die, and the middle dieth without issue, now is the elder son barred to have any recovery by a writ of Formedon, because that the warranty of the middle brother is collaterall to him, insomuch that he may by no manner convey to him by force of the taile, any descent by the middle

brother and therefore it is a collaterall warranty. But if in this case the elder brother die without issue, now the yonger brother may well have a Formedon in the descender, & recover the same land, because that the warranty of the middle brother is lineall to the younger brother, because it may be, that by possibility the middle brother may be seised by force of the tail after the death of his elder brother, and then the youngest brother may cõvey his title of descẽt by the middle brother &c.

Also, if the tenant in the taile discontinue the taile, and hath issue and die, and the uncle of the issue release to the discontinuee with warranty and die without issue, this is a collaterall warranty to the issue in the taile, because that the warranty descendeth upon the issue, which cannot cõvey himself to the tail, by mean of his uncle.

Also, if the tenant in the taile hath issue two daughters and die, and the elder daughter entreth into the whole, & thereof make a feoffment in fee with warranty & after the elder daughter dieth without issue: In this case the yonger daughter is barred, as to the moity, & as to the other halfe she is not barred, for as to the moity that belõgeth to the younger daughter, she is barred, because that as to the moity that belongeth to her, she cannot convey the descent by the means of her elder sister and therefore as to the moity, this is collaterall warranty, but as to the other moity which belongeth to her elder sister, by the same elder sister the warranty is no bar to the younger sister, because that she may convey her descent as to that moity that belongeth to her elder, by the same elder sister. And so as to that moity that belongeth to the elder sister, the warranty as to that is lineall to the younger sister. And

And note well, that as to him that demandeth fee simple by any of his ancestors, he shall be barred by lineall warranty which descendeth upon him except he be restrained by some statute, but he which demandeth fee taile by a writ of Formedon in the discender, shall not be barred by lineall warranty, except he have enough by descent in Fee simple by the same ancestor that made the warranty, but a collaterall warranty is a bar, to him that demanded fee, and also to him that demandeth fee taile, without any other descent of fee simple, except in cases that be restrained by the statute. and other cases for certaine causes as shall be said hereafter.

Also, if land be given to a man and to his heires of his body begotten, the which taketh a wife, and hath issue a son between them, and the husband discontinueth the taile in fee, and dieth, and after the wife releaseth to the discontinuee in fee with warranty, and dieth, and the warranty descendeth to the son, this is a collaterall warranty. But if tenements be given to the husband and the wife, and to the heires of their two bodies begotten, which have issue a son, and the husband discontinueth the taile, and dieth, and after the wife releaseth with warranty and dieth, this warranty is but a lineall warranty to the son, for the son shall not be barred in this case to sue his writ of Formedon, except he have enough by descent in fee simple by his mother, because that their issue in a writ of Formedon ought to convey to him the right as heire to his father and to his mother of their two bodies begotten, by forme of the gift. And so in such case the warranty of the father, and the war-

ranty of the mother, be but as lineall warranties to the heire, &c. And note well and in every case where a man demandeth tenements in fee taile by a writ of Formedon, if any of the issues in the taile that had possession, or that hath possession, make a warranty, &c. if he that sueth the writ of Formedon might by any possibility by matter that might be in deed, convey to him, by him that made the warranty by the force of the gift: This is a lineall warranty, and not collaterall.

Also, if a man have issue three sons, and he giveth land to the eldest son, to have and to hold to him and to the heires of his body begotten, and for default of such issue, the remainder to the middle son, to him, and to the heires of his body begotten, & for default of such issue the remainder to the youngest son, and to the heires of his body begotten, in this case if the eldest son discontinue the taile in Fee, and bind him and his heires to warranty, and die without issue, this is a collaterall warranty to the middle son, and he shall be barred to demand the same land by force of the remainder, because that the remainder is his title, and his eldest brother is collaterall to the title which beginneth by force of the remainder

In the same manner it is if the middle son had the same land by force of the remainder, because that his eldest brother made no discontinuance, but dieth without issue of his body, and after the middle son maketh a discontinuance with warranty, &c. and dieth without issue, this is a collaterall warranty to the youngest son. and also in this case if any of the said sons be disseised, and

and the father that made the gift releaſe to the diſſeiſor all his right, &c. with warranty, this is a collaterall warranty to the ſon upon whom the warranty deſcended, Cauſa qua ſupra. And ſo note well, that where a man that is collaterall to the title, &c. releaſeth with warranty, this is a collaterall warranty.

Alſo, if the father give Land to his elder ſon, to have and to hold to him and to his heirs males of his body begotten, the remainder to the ſecond ſon, &c. if the eldeſt brother alien in fee with warranty &c. and hath iſſue females, and dieth without iſſue male, this is not a collaterall warranty to the ſecond ſon, nor ſhall not hurt him of his action by Formedon in the remainder, becauſe that the warranty deſcendeth to the daughter of the eldeſt ſon and not to the ſecond ſon. For every warranty that deſcendeth, deſcendeth to him that is heire unto him which made the warranty by the Common Law, &c.

Alſo, if Land be given to a man and to his heires males of his body begotten, and for default of ſuch iſſue the remainder thereof to his heires females of his body begotten, and after the donee in the taile maketh a feoffment in fee with warranty according, and hath iſſue a ſon and a daughter and dieth, this warranty is but a lineall warranty to the ſon, to demand by writ of Formedon in the deſcender. And it is but lineall to the daughter to demand the ſame land by writ of Formedon in the remainder, if her brother die without heire male, becauſe that ſhe claimeth as heire female of the body of her father begotten. But in this caſe, if her brother in this life releaſe to the diſcontinuee with

warranty, &c. and after die without issue, this is a collaterall warranty to the daughter, because that she cannot convey to her the right that she had by force of the remainder by any means of discent by her brother, and therefore the brother is collaterall to the title of his sister, and therefore his warranty is collaterall, &c.

Also, I have heard say, that in the time of King Richard the second, there was a Justice in the Common Pleas, dwelling in Kent, called Rickhill, that had issue divers sons: and his intent was, that his eldest son should have certaine lands to him and to his heires of his body begotten, and for default of issue the remainder to his second son, &c. and so the third son, &c. And because that he would that none of his sons should alien or make warranty for to bar or to hurt the other that should be in the remainder, &c. He caused to be made an Indenture to such effect, that is to say, that the Lands and tenements were given to his eldest son upon this condition, that if the eldest son alienes in fee, or in fee taile, &c or any of his sons alienes &c. that then their estate should cease and should be void, and that then the said Lands or Tenements immediately should remaine to the second son, and to the heires of his body begotten, and that upon the same condition, that is to say, if the second son alien &c. that then his estate should cease, and that then the same lands and tenements should remaine to the third son, and to the heires of his body begotten, &c. the remainder to other of his sons, and livery of seisin was made according. But it seemeth by reason that all such remainders in the forme before said be void, and of no

value,

value, and that for three causes. One cause is, because every Remainder that beginneth by a deed, it behoveth that the remainder be in him to whom the remainder is tailed by force of the same deed, when the livery of seisin is made to him that hath the Franktenement. And such remainder was not to the second son at the time of Livery of seisin in case before said &c.

The second cause is, if the first Son alien the tenements in fee, then is the franktenement and the Fee simple in the alienee and in none other, and if the donor had any reversion, by such alienation the reversion is discontinued, then how by any reason may it be that such remainder shall begin his being and his growing immediately after such alienation made to a stranger, that hath by the same alienation Franktenement, and Fee simple, and also if such remainder should be good, then might he enter upon the alienee, where he had no manner of right before the alienation, which should be inconvenient. The third cause is, when the condition is such, that if the eldest son alien, &c that his estate shall cease, or shall be void, &c. then after such alienation &c. may the donor enter by force of such condition, &c. as it seemeth, and so the donor or his heires in such case ought more soner to have the land, than the second son that hath no right before such alienation, &c. and so it seemeth that such remainders in the case aforesaid be void.

Also, at the Common Law before the statute of Glocester, if the tenant by curtesie had alienned in Fee with warranty according, after his decease, this was a bar to the heirs. &c. as it appeareth by the words of the same statute:

But it is remedied by the same statute, that the warranty of the Tenant by the curtesie shall be no bar to the heire, except he have enough by descent by the tenant by the curtesie, for before the said Statute that was a collaterall warranty to the heire, because he could not convey any Title of descent to the tenements by the Tenant by the curtesie, but only by his mother or other of his ancestors, &c. and that is the cause why it it was collaterall warranty. But if a man Inheritor, take a wife, which have issue a son between them and the father dieth and the son entreth into the land, and endoweth his mother, and after his mother alieneth that that she hath in her dower to another in fee, with warranty according, and after dieth, and the warranty descendeth to his son, now the son shall be barred to demand the same land because of the said warranty, because that such collaterall warranty of tenant in dower is not remedied by any statute. The same law is where tenant for terme of life maketh an alienation with warranty, &c. and dieth, and the warranty descendeth to him that had the reversion, or the remainder, &c. they shall be barred by such warranty, &c.

Also, in the said case, if it so were that when the Tenant in dower alieneth, &c. the heire was within age, and also at that time that the warranty descendeth unto him, he was within age, in this case the heire may after enter upon the Alienee, notwithstanding the warranty descendeth, &c because that no laches shall be adjudged in the heire within age, that he entred not upon the Alienee in the life of the tenant in Dower, but

but if the heire was within age at the time of the Alienation, and after he came to full age in the life of the tenant in dower, and so being of full age he entred not in the life of the tenant in Dower, and after the tenant in dower dieth, there peradventure the heire shall be barred by such warranty, because it shall be accounted his folly, that he being of full age, entred not in the life of the tenant in dower, &c.

Also it is spoken in the end of the said Statute of Glocester, that speaketh of the alienation with warranty made by the tenant by the curtesie in such forme

Also, in the same manner the heire of the woman after the death of his father and mother shall not be barred of action, if he demand the heritage of the marriage of his mother by a writ of entry that his father aliened in the time of his mother, whereof no fine is levied in the Kings Court, &c. And so by force of the same Statute, if the husband of the wife alien the heritage of marriage of his wife in fee with warranty, &c. by his deed in the Country, this is cleare Law, that this warranty shall not bar the heire, except he have enough by descent, &c. But the doubt is, if that the husband alien the heritage of his wife by fine levied in the Kings Courts with warranty, &c. if this shall bar the heire without any descent in value, &c. And as to that I will say here certaine reasons that I have heard say in this matter. I heard my Master Sir Rich. Newton late Chiefe Justice of the Common Pleas say once in the same pleas, that such warranty that the Baron maketh by fine levied in the Kings Court, shall bar the heire, though that

that he have nothing by descent, because the Statute saith, wherof no fine is levied in the Kings Court &c. And so by his opinion, this Warranty by fine, &c. abideth yet a collaterall Warranty as it was at the Common Law not remedied by the said Statute, because that the said Statute excepteth the alienation by fine with warranty. And some other have said, and yet say the contrary, and this is their proofe, that as by the same chap. of the said Statute is ordained, that the Warranty of the Tenant by the curtesie shall not bar the heire, except he have enough by descent, &c though that the Tenant by the curtesie levy a fine of the same lands with warranty, &c. as strongly as he can, yet this Warranty shall not bar the heir, except he have assets or enough by descent, &c. And I believe that this is Law, and therefore they say, that it should be inconvenient to understand the Statute in such forme that a man that hath not but in the right of his wife, may by fine levied by himselfe of the tenements that he hath but in the right of his wife with warranty, &c. bar the heire of the said tenements without descent of the fee simple, &c. where the tenant by the curtesie cannot do it. But they have said, that the Statute shall be understood after this forme, that is to say, where the Statute speaketh wherein no fine is levied in the Kings Court, that is to say, wherof no lawfull fine is rightfully levied in the same Kings Court, and that is whereof no fine of the husband and his wife is levied in the Kings Court, for at the time of the making of the said Statute, every estate of Lands or tenements that any man or woman had that should descend

to

to his heire, was Fee simple without condition, or upon condition in deed, or in Law. And because that such fine then might lawfully have been levied by the husband and his wife, and that if the heires of the husband warrant, &c. such warranty shall bar the heire, &c

Also, so they say, that this is the understanding of the said statute, for if the husband and the wife made a feoffment in Fee by deed in the country, the heire after the decease of the husband and the wife shall have a writ of Entre sur Cui in vita, &c. notwithstanding the warranty of the husband: Then if no such exception was made in the statute of the fine levied, &c. then the heire should have the writ of Entre, &c. notwithstanding the fine levied by the husband and the wife, because that the words of the statute before the exception of the fine levied, &c. be generall, &c. that is to say, that the heire of the woman after the death of the husband and the wife, shall not be barred of action, if he demand the heritage, or the marriage of his mother by a writ of Entre, that his father alened in the time of his mother, and so it should be in that case of the statute, except such words were, that is to say, whereof no fine is levied in the Kings Court: and so they say, that this is to be understood, whereof no fine by the husband and the wife, is levied in the Kings Court, the which is lawfully levied in such case. For if the Justice have knowledge that a man that hath nothing but in the right of his wife, will levy a fine in his name only, they will not, nor ought not to take such fine to be levied by the husband only, without naming the wife, therefore inquire of this matter.

Also,

Also, it is to wit, that in such words where the heire demandeth the heritage or marriage of his mother this word (Or) is a disjunctive, and is as much to say, if the heire demand the heritage of his mother, that is to be understood, the tenements that his mother had in fee simple by descent or by purchase, or if the heire demand the marriage of his mother, that is to say, the tenements that were given unto his mother in frankmarriage.

Also, where it is moved in divers deeds these words in Latine, Ego & hæred' mei, &c. warrantizabimus, & imperpetuum defendemus, it is to see what effect hath that word Defendemus in such deeds: and it seemeth that it hath not the effect of warrantize, nor comprehendeth any clause of warrantize: for if it should be so that it taketh effect, or cause of warrantize, then it should be put in some fines levied in the Kings Court. And a man never saw that this word Defendemus was in a fine but only this word Warrantizabimus, by which it seemeth, that this verbe Warrantizo maketh warranty, and is the cause of warrantize, and no other word in our Law.

Also if tenant in the taile be seised of tenements devisable by Testament after the custome, &c. and the tenant in the taile alieneth the tenements to his brother in fee, and hath issue and dieth, and after his brother deviseth by his testament the same tenements to another in fee and bindeth him and his heirs to warrantize, &c. and dieth without issue, it seemeth that this warranty shall not bar the issue in the taile if he will sue his writ of Formedon, be-

cause

cause that the warranty descended not to the issue in the tatle, insomuch as the uncle of the issue was not bound by force of the same warranty in his life: And the cause that he could not warrant the land in his life is, insomuch that the devise could not take any execution or effect but after his decease, and insomuch that the uncle in his life was not held to warranty, such warrantize may not descend from him to the issue in the taile, &c. for nothing may descend from the Ancestor to his heire, but the same that was in the Ancestor. Also a warranty may not go after the nature of tenements by custome, but only after the forme of the Common Law. For if tenant in taile be seised of tenements in Borough English. where the custome is, that all tenements of the same Borough ought to descend to the youngest son and he discontinueth the taile with warranty, &c. and hath issue two sons and dieth seised of other lands and tenements in the same borough in fee simple to the value and more of the tenements tailed, &c. yet the youngest son shall have a Formedon of the tenements tailed, and shall not be barred by the warrantize of his father, though enough to him descended in fee simple from the same father after the custome. for this. that the warrantize descendeth upon the elder brother that is in full life, &c and not upon the youngest son. In the same manner it is of collaterall warrantize made of such tenements where the warrantize descendeth to the elder son, &c. this shall not bar the younger son, &c. In the same manner it is of tenements in the Shire of Kent, which is called Gavelkind, the which tenements

be

be departible among the brethren, &c. after the cuſtome, &c. if any ſuch warranty be made by their anceſtors, ſuch warranty deſcendeth all only to the heire that is heire by the Common Law, and not to all the heires which are heires of ſuch tenements after the cuſtome, &c.

Alſo, if tenant in the taile have iſſue two daughters by divers venters, and dieth, and the daughters enter, and a ſtranger diſſeiſeth them of the ſame tenements, and one of the daughters releaſeth by her deed to the diſſeiſor all her right, and bindeth her and her heires to warrantize, and dieth without iſſue, in this caſe the ſiſter that ſurvyveth may well enter, and put out the diſſeiſor of all the tenements, for this, that ſuch warrantize is no diſcontinuance, nor collaterall warrantize to the ſiſter that ſurvyveth, for this, that they be of halfe blood, and the one may not be heire to the other after the common Law. But otherwiſe it is where there be daughters of tenants in the taile by one venter.

Alſo, if tenant in the taile let tenements to another for terme of life, the remainder to another in fee, and the collaterall anceſtor confirmeth the eſtate of the tenant for terme of life, and bindeth him and his heires to warrantize for terme of life of the tenant for terme of life and dieth, and the tenant in the taile hath iſſue and dieth, now this iſſue is barred to aske the tenements by writ of Formedon during the life of the tenant for terme of life, becauſe of the collaterall deſcent upon the iſſue in the taile. But after the deceaſe of the tenant for terme of life, the iſſue ſhall have a Formedon, &c. And upon this I have heard a reaſon, that this caſe ſhall prove another

caſe:

case: that is to say, If a man let his land to another, to have and to hold unto him and to his heires for terme of anothers life, and the Lessor dieth, living him to whose life, &c. and a stranger entreth into the land, that the heire of the Lessee may put him out, for this, that is the case next aforesaid, insomuch that a man may bind him and his heires to warrant to the tenant for terme of life, all only during the life of the tenant for terme of life, and the warrantize descendeth to the heire of him that made the warrantize, the which warrantize is no warrantize of inheritance, but all only for terme of anothers life. By the same reason where tenements be let to a man to have and to hold to him and to his heires for terme of anothers life, if the father die, living him to whose life, &c. his heire shall have the tenements living him to whose life, &c. For they have said, that if a man grant an annuity to another, to have and to take to him and to his heirs for terme of anothers life, if the grantee die, &c. that after his heire shall have the annuity during the life of him to whose, &c. Quære de ista materia, &c.

But where such a lease or grant is made to a man and his heires for terme of yeares, in this case the heire of the lessee and the grantor shall never have after the death of the lessee or the grantee that that is so letten or granted, for this, that it is a chattell reall, and all chatteis reals by the Common Law shall come to the executors of the grantee or the lessee and not to the heire &c.

Also, in some cases it may be, that howbeit that a collaterall warrantize be made in fee, &c. yet such warrantize may be defeated and anien-

ted.

ted. As the tenant in the taile diſcontinueth the taile in fee, and the diſcontinuee is diſſeiſed, and the brother of the tenant in the taile releaſeth by his deed to the diſſeiſor all his right, &c. with warrantize in fee, and dieth without iſſue, and the tenant in the taile hath iſſue and dieth, now the iſſue is barred of his action by force of the collaterall warranty deſcending upon him: but if after this the diſcontinuee enter upon the diſſeiſor, then may the heire in the taile have his Action of Formedon, &c. for this, that the warranty is antented and defeated. For when the warrantize is made unto a man upon any eſtate that then he had, if the eſtate be defeated, the warranty is defeated.

In the ſame manner it is if the diſcontinuee make a feoffment in fee reſerving to him certaine rent, and for default of payment a reentry, &c. and a collaterall Anceſtor releaſeth to the feoffee that hath eſtate upon condition, &c. and dieth without iſſue, though that the warranty deſcended upon the iſſue in the taile, yet if after the rent be behind, and the diſcontinuee entreth into the land, &c. then the iſſue in the taile ſhall have his recovery by a Writ of Formedon, for this, that the warranty collaterall is defeated. And ſo if any ſuch collaterall warranty be pleaded againſt the iſſue in the taile in his action of Formedon, he may ſhew the matter as is afore ſaid, how the warranty is defeated, and ſo he may well maintaine his action.

Alſo, if a tenant in the taile make a feoffment to his uncle, and after his uncle maketh a feoffment in fee with warrantize, &c. to another, and after the feoffee of the uncle enfeoffeth againe the uncle

uncle in fee, and after the uncle enfeoffeth a ſtranger in fee without warrantize, and dieth without iſſue, and the tenant in the taile will bring his writ of Formedon againſt the ſtranger that was the laſt feoffee and that by the uncle, in this caſe the iſſue ſhall never be barred by the warranty that was made by the uncle to the ſaid firſt feoffee of his uncle, for this, that the ſaid warrantize was defeated and aniented, for this, that the uncle tooke againe to him as great eſtate of his ſaid firſt iſſue to whom the warrantize was made, as the ſame feoffee had of him: And the cauſe why the warranty is aniented in this caſe, is this, that is to ſay, that if the warrantize were in his force, then the uncle ſhall warrant a fee ſimple unto himſelfe, that may not be, but if the feoffee made eſtate to the uncle for terme of life, or in fee taile, having the reverſion unto him, &c. Or that he made a gift in the taile to the uncle, or a leaſe for terme of life, the remainder over, &c. In this the warrantize is not all utterly aniented, but it is put in ſuſpence during the eſtate that the uncle had, for after this that the uncle is dead without iſſue, then he in the reverſion, or he in the remainder ſhall bar the iſſue in the taile of his writ of Formedon by the collaterall warrantize in ſuch caſe, &c. But otherwiſe it is where the uncle had as great eſtate in the land by the feoffee to whom the warrantize was made, as the feoffee had of him, &c.

Alſo, if the uncle after ſuch feoffment made with warrantize, or a releaſe made by him with warrantize be attaint of felony, or outlawed of felony, ſuch collaterall warranty ſhall not bar nor grieve the iſſue of the taile, for this, that by the

attainder of felony, the blood is corrupt between them &c.

Also, if tenant in the taile be disseised, and after maketh a release to the disseisor with warrantize in fee, and after the tenant in the taile is attaint or outlawed of felony, and hath issue and dieth, in this case the issue in the taile may enter upon the disseisor: And the cause is for this that nothing maketh discontinuance in this case but the warranty, and the warranty may not descend to the issue in the taile, for this, that the blood is corrupt between him that made the warrantize and the issue in the taile for the warrantize alway abideth at the Common Law, and the Common Law is such that when a man is outlawed, or attaint of felony, which outlawry is an attainder in the Law that the blood between him and his son, and all other which should be said his heires is corrupt, so that nothing by descent may descend to any that may be his heir by the Common Law. And the wife of such a man that is so attaint shall never be endowed in the tenements of her husband so attaint, &c. And the cause is, because men should more eschew to do felony, &c. But the issue in the taile, as to the tenements tailed is not in such case barred, because he is inheritable by force of the statute, and not by the course of the Common Law. And therefore such attainder of his father, or his Ancestor in the taile, &c. shall not put him out of his right, that he should have by force of the taile.

Also, if tenant in the taile enfeoffe his uncle, which enfeoffeth another with warranty, &c. if after the feoffee by his deed release to the uncle

all

all manner of warranties or all manner of covenants reals, or all manner of demands, by such releale the warranty is extinct. And if the warranty in such case be pleaded against the heire in the taile that bringeth his writ of Formedon, to bar the heire of his action, if the heire have and plead the said releale, &c. he shall defeat the plea in bar, &c. and many other causes and matters there be whereby he may defeat warranties.

And it is to wit, that in the same manner as collaterall warranty may be defeated by matter in deed, or in law, in the same manner may lineall warranty be defeated &c. For if the heire in the taile bring a writ of Formedon, and a lineall warranty of his Ancestor inheritable by force of the taile be pleaded against him with that the assets to him descended of fee simple by the same Ancestor that made the warranty, if the heire that is demandant may annull and defeat the warranty, this sufficeth to him: for the descent of other tenements of fee simple maketh nothing to bar the heire without the warranty, &c.

FINIS.

Here beginneth the Table of this preſent Book.

NOw I have made for thee, my Sonne, three Bookes. The firſt is of Eſtates that men have of lands or tenements, that is to ſay,

Of Tenant in Fee ſimple.
Tenant in Fee tatle.
Tenant in the Tatle after poſſibility of iſſue extinct.
Tenant by the Curteſie of England.
Tenant in Dower.
Tenant for terme of life.
Tenant for terme of yeares.
Tenant at will by the Common Law.
Tenant at will by the cuſtome of the Manner.

The ſecond Book.

The ſecond Book is, of Homage.
Fealty.
Eſcuage.
Knights ſervice.
Socage.
Frankalmoigne, or Free almes.
Homage auncestrell.

Grand

And these two small Books have I made for thee, for to understand better certaine chapters of the ancient books of Tenures.

The third Book.

And know thou my son, that I will not that thou beleeve, that all that I have said in the said Books is Law, for that will I not take upon me nor presume: but of those things that be not Law, inquire and learne of my wise Masters learned in the Law.

Not-

Notwithstanding, though that certains things that be noted and specified in the said Books be not Law, yet such things shall make thee more apt and able to understand, and learne the Arguments and the Reasons of the Law: For by the Arguments and the Reasons in the Law, a man may more sooner come to the certainty, and to the knowledge of the Law.

Lex plus laudatur, quando ratione probatur.

FINIS.